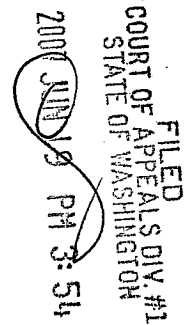
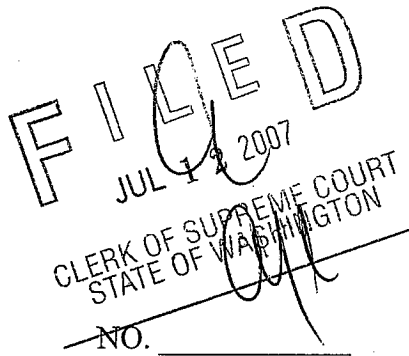


80357-9



SUPREME COURT OF THE STATE OF WASHINGTON

COURT OF APPEALS DIVISION I

NO. 56625-3-I

RAJVIR PANAG, on behalf of herself and all others similarly situated,
Respondent,
v.

FARMERS INSURANCE COMPANY OF WASHINGTON, a domestic
insurance company, and CREDIT CONTROL SERVICES, INC. d/b/a
Credit Collection Services,
Petitioner.

**PETITION FOR REVIEW
BY FARMERS INSURANCE COMPANY OF WASHINGTON**

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ORIGINAL

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I. IDENTITY OF PETITIONER; THE DECISION FROM WHICH REVIEW IS SOUGHT

Farmers Insurance Company of Washington (“Farmers”), Appellant-Cross-Respondent below, seeks review from the combined decision by the Court of Appeals, Division One, in cases No. 57068-4-1 (*Stephens v. Omni Ins. Co. and Credit Control Services, Inc.*) and No. 56625-3-1 (*Panag v. Farmers Ins. Co. and Credit Control Services, Inc.*). The decision was filed on April 23, 2007 and published at __ P.3d __, WL 1180497. See Appendix, Ex. A. On May 14, 2007, Credit Control Services, Inc. (“CCS”) filed a motion for reconsideration, which the Court of Appeals denied on May 25, 2007.

II. ISSUES PRESENTED FOR REVIEW

A. Whether an uninsured tortfeasor having no consumer or contractual relationship with the defendant that is attempting to recoup damages caused by the torfeasor’s conduct can challenge defendant’s business practices under the Consumer Protection Act (“CPA”)?

B. Whether the Court of Appeals erred in branding as deceptive the use of the term “debt” in efforts to collect alleged tort obligations, when the Legislature required the courts construing the CPA to “be guided by” federal authorities “dealing with . . . similar matters,”

and when both the federal and state statutes regulating collection practices *define* unpaid alleged consumer obligations as debts?

C. Whether the Court of Appeals erred when it misconstrued the amounts plaintiff expended to *investigate* whether she had suffered an “injury to business or property” under the CPA – namely, by buying a postage stamp, paying for parking at her lawyer’s office, and (after filing her case) ordering a credit report that showed no adverse credit impact – for proof that a CPA injury existed?

III. STATEMENT OF THE CASE

“It is a privilege granted by the state to operate a motor vehicle upon the highways of this state. The legislature recognizes the threat the uninsured drivers are to the people of the state. In order to alleviate the threat posed by uninsured drivers it is the intent of the legislature to require that all persons driving vehicles registered in this state satisfy the financial responsibility requirements of this chapter.”

RCW 46.30.010 (Mandatory Liability Insurance, Legislative Intent).

Ms. Panag violated the Mandatory Liability Insurance Law by driving her car without insurance. On October 5, 2003, she had an accident that caused damage to the car driven by Farmers’ insured, Mr. Hamilton. CP 3, 478-481. After paying Hamilton \$6,442.53, Farmers became subrogated to his claim against Ms. Panag for part of \$6,442.53 proportionate to her fault. CP 486. Farmers contracted with Credit

Control Services, Inc. ("CCS") to collect the subrogated amount. CP 495-497. Acting as an independent contractor, CCS sent Ms. Panag several pointed letters demanding payment. CP 168-171. Ms. Panag never responded. Instead, she brought suit against CCS and Farmers seeking to represent a class of individuals who received similar letters; by definition, the purported class consists entirely of individuals who violated the Mandatory Liability Insurance Law. She claimed that CCS's letters violated the Consumer Protection Act by seeking payment of a "debt" before her liability to Hamilton was judicially determined. CP 139-141 ¶¶ 40-49. The trial court dismissed Ms. Panag's claim on summary judgment for lack of injury cognizable under the CPA. CP 829-831.

In a parallel action, Ms. Panag's counsel sued CCS and another insurer, Omni, on behalf of Mr. Stephens, who received similar letters. Mr. Stephens rear-ended Omni's insured, and failed to provide proof of insurance. CP (Stephens) 68, 198-199.¹ The theory of recovery was the same. Mr. Stephens claimed that referring to the subrogation claim as a

¹ Under RCW 46.30.020(1)(d), failure to provide proof of insurance "creates a presumption that the person does not have motor vehicles insurance." For unknown reasons, Stephens did not disclose that he was insured by Geico for eleven months after the accident. CP (Stephens) 386. Stephens subsequently accepted liability for causing the accident and Geico paid Omni the amount CCS sought to collect. CP (Stephens) 32-36, 189-190, 192-196, 388-390.

“debt” was an unfair or deceptive practice because the claim had not been reduced to judgment. The trial court agreed, concluding as a matter of law that “[t]he practice of sending collection notices . . . to individuals when the alleged amount ‘due’ or owed is an unliquidated claim that has not been previously adjudicated in any way is a violation of the Washington Consumer Protection Act.” CP (Stephens) 584-585.

In a single published opinion, the Court of Appeals reversed the summary judgment in *Panag*, and affirmed the summary judgment in *Stephens*. Appendix, Ex. A.

IV. ARGUMENT

In *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 784, 719 P.2d 531 (1986), this Court responded to “increased . . . confusion surrounding private rights of action under the CPA.” After *Hangman Ridge*, all private plaintiffs had to establish “five elements, all statutorily based . . . in order to . . . prevail under a private CPA action.” *Id.* at 784-85. Twenty years later, the Court of Appeals has fundamentally misconstrued three aspects of the *Hangman Ridge* test.

First, its decision sanctions an unprecedented expansion of the CPA to disputes arising out of attempts to recoup damages caused by plaintiff’s *unlawful and tortuous conduct*, without any underlying

consumer or private contractual relationship between the tortfeasor/plaintiff and defendant. Second, the decision ignores settled law on the principal substantive issue – unquestionably, plaintiff’s liability for the underlying tort *is* a “debt” – and establishes the opposite standard, as a matter of law. Finally, the decision invites abuse by allowing CPA claimants with no identifiable injury to manufacture it under the guise of “investigating” their potential claims at the trivial cost of buying a postage stamp or putting a few coins in the parking meter.

Each of these errors warrant review under RAP 13.4(b)(1), (2) and (4) as significant departures from *Hangman Ridge*, as well as the Court of Appeals’ own prior decisions construing the CPA.

A. The CPA Does Not Apply Without An Underlying Consumer or Contractual Relationship Between the Plaintiff and the Defendant

The Court of Appeals’ initial error is fundamental to the proper construction of the CPA. Never before has any Washington court allowed a CPA claim to go forward when the claimant (1) was not an actual or potential consumer of the defendant’s goods or services, (2) was never solicited by the defendant to purchase goods or services, nor (3) had any private contractual relationship with the defendant directly or through an intermediary. To the contrary, the collection efforts in question began

because Ms. Panag was a *non-consumer* of insurance services, a choice the Legislature declared to be a “threat . . . to the people of the state.” RCW 46.30.010.

The Court of Appeals reasoned that “neither the Act nor *Hangman Ridge* mentions the ‘consuming public or the idea of consumption as a limitation on the definition of ‘trade or commerce.’” Appendix, Ex. A at 21. *See also id.* at 23 (“The Act simply does not require a consumer relationship as a prerequisite for standing.”). These statements do not accurately describe either the reach of the Act or the broader meaning of *Hangman Ridge*.

It is true that RCW 19.86.020 prohibits “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” It is also true that RCW 19.86.010 broadly defines “trade” and “commerce” to include “the sale of assets or services, and any commerce directly or indirectly affecting the people of the state of Washington.” However, “the Act” is not limited to RCW 19.86.010 and .020 but includes additional provisions of RCW Chapter 19.86 that are known collectively as “the Consumer Protection Act.” RCW 19.86.910. The Legislature did not simply mention “Consumer Protection” in the

Act's title but enacted a specific section that unambiguously states its purpose:

This act shall be known and designated as the
"Consumer Protection Act."

RCW 19.86.910.

This legislative statement dispels any attempt to read the notion of consumer protection out of the CPA. It also highlights the Court of Appeals' error. Replacing the Court of Appeals' term ("the Act") with its full designation – "the Consumer Protection Act" – produces the non sequitur at the heart of the error: "[t]he [Consumer Protection] Act does not identify the consuming public as the entity to be protected." See Appendix, Ex. A at 23.

"The courts should avoid the literal interpretation of statutory terms or provisions that would be inconsistent with the overall purpose of the statute." 3A Norman J. Singer, *Statutes and Statutory Construction* at 649-650 (6th Ed. 2003). See also *Hangman Ridge*, 105 Wn.2d at 788 (CPA "is to be construed as a whole.").

In *Hangman Ridge*, at issue was the public-interest element of a CPA claim. This Court held that "although the specific section creating a private right of action (RCW 19.86.140) did not mention public interest, "the purpose section" of the CPA (RCW 19.86.920) specifically addressed

its importance. Therefore, the Court was “compelled to interpret RCW 19.86 in its entirety and conclude that the Legislature intended that even a private plaintiff should be required to show that the acts complained of affect the public interest.” *Id.* at 788.

The Court of Appeals failed to interpret the CPA “as a whole” as required by *Hangman Ridge*. It construed the definitions in RCW 19.86.010 and .020 literally, in isolation from the legislative statement of the Act’s overall purpose. *See* RCW 19.86.910 (the Act “*shall be known and designated as the ‘Consumer Protection Act.’*”) (emphasis added). *See also Tanner Electric Coop. v. Puget Sound Power & Light Co.*, 128 Wn.2d 656, 911 P.2d 1301, 1314 (1996) (characterizing the Act as “consumer protection legislation”). Ignoring the Act’s central purpose led the Court of Appeals to read the CPA with unprecedented breadth the Legislature never intended and this Court never authorized.

In *Hangman Ridge*, this Court described two types of disputes contemplated by the CPA: (1) those that involve consumer transactions (sales and marketing of goods or services), and (2) those that involve “a breach of a private contract” (such as attorney-client; insurer-insured, realtor-purchaser, escrow agent-client), which poses a “likelihood that additional plaintiffs have been or will be injured in exactly the same

fashion.” *Hangman Ridge*, 105 Wn.2d at 790. Both types of disputes involve some underlying business transaction between the plaintiff and the defendant or their intermediaries. All viable CPA claims in Washington – including cases cited by the Court of Appeals² – fall into one of two types of disputes identified in *Hangman Ridge*. See Appendix, Ex. B.

This case does not. For the first time, the Court of Appeals allowed a CPA claim to challenge defendant’s conduct that did not occur in the context of any actual or potential transaction with the plaintiff. Instead, defendants were responding to plaintiff’s negligent driving and violations of the state Mandatory Liability Insurance statute. ***There is no dispute that Ms. Panag and Mr. Stephens would not have received the letters they complain about if they had purchased, (and provided proof***

² See *Escalante v. Sentry Ins. Co.*, 49 Wn. App. 375, 386-88, 743 P.2d 832 (1987) (the estate of passenger who was covered under the driver’s policy could sue the driver’s insurer); *Wash. State Physicians Ins. Exch. & Ass’n v. Fisons Corp.*, 122 Wn.2d 299, 313, 858 P.2d 1054 (1993) (because the drug company “targets its marketing efforts toward the physician, not toward the patient” the physician (or his insurer) can sue the drug company under the CPA); *Holiday Resort Community Ass’n v. Echo Lake Ass’ns, LLC.*, 134 Wn. App. 210, 135 P.2d 499 (2006) (mobile home park tenants can sue an organization that represented the mobile home park owners and drafted the form rental agreement); *Short v. Demopolis*, 103 Wn.2d 52, 61, 691 P.2d 163 (1984) (a client can rely on the CPA “to challenge entrepreneurial aspects of the legal practice”); *State Farm Fire & Cas. Co. v. Huynh*, 92 Wn. App. 454, 459, 962 P.2d 854 (1998) (an insurance company was a “direct purchaser of chiropractor’s services for the benefit of its insureds” and could sue the chiropractor for false billings); *First State Ins. v. Kemper Nat’l Ins.*, 94 Wn. App. 602, 609, 971 P.2d 953 (1999) (an excess insurer is “subrogated to the rights of an insured against the primary insurer” and can sue the latter for failure to defend under the CPA).

of) liability insurance following their accidents as required by RCW 46.30.020(c).

“The legislature recognizes the threat that uninsured drivers are to the people of the state.” RCW 46.30.010. There are good reasons for this policy statement. A study by the Insurance Research Council (IRC), *Uninsured Motorists, 2006 Edition*, reports that across the United States when someone is injured in a car accident the chances are about one in seven that the at-fault driver was uninsured. Appendix, Ex. C at 3. Washington ranks ninth among the ten states with the highest percentage of uninsured drivers (18.5 percent). *Id.* at 5-6. The public bears the cost of this problem through uninsured motorists (UIM) coverage premiums and deductibles. See RCW 48.22.030(2) and (11) (requiring insurers to offer UIM coverage for all new or renewed policies as a way “to protect innocent victims of motorists of underinsured motor vehicles”).

Ms. Panag is part of this problem. The Court of Appeals’ mechanical application of the phrase “trade or commerce” put the CPA on its head by allowing Ms. Panag to act as a private attorney general in challenging defendants’ response to her wrongdoing. *Cf. Wickswat v. Safeco Ins. Co.*, 78 Wn. App. 958, 970, 904 P.2d 767 (1995) (“The CPA exists to protect consumers, not to aid and abet fraud.”) (citing *Mutual of*

Enumclaw Ins. Co. v. Cox, 110 Wn.2d 643, 652-53, 757 P.2d 499 (1988)).

The decision opens the door to abuse – especially in purported class actions such as this case – by those whom the Legislature never intended to benefit from the CPA protection. If Ms. Panag can sue under the CPA so can people who illegally hook up their televisions to cable programming and refuse the cable company’s demands for payment. That the cable company is engaged in “trade or commerce” is not enough to bring the dispute over payment for pirated programming into the realm of the CPA because its commerce is directed towards law-abiding public, not violators of the law. The Court of Appeals’ contrary conclusion warrants review and reversal.

B. The Court of Appeals Improperly Disregarded the Legislature’s Directive to Construe the CPA Consistently With Federal Law on “Similar Matters”

The key issue in this case is whether an uninsured driver’s obligation to pay for damages incurred by an insured driver is a “debt” that is “due” even though it has not been reduced to judgment. Federal Debt Collection Practices Act (“FDCPA”) that regulates collection of consumer debts answers a similar question affirmatively:

The term “debt” means any obligation or *alleged obligation* of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the

transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

15 U.S.C. § 1692a(5) (emphasis added).³ The Court of Appeals ignored the specific legislative directive to construe the CPA consistently with “federal statutes dealing with the same or similar matters,” *see* RCW 19.86.920, and announced a contrary standard – without any authority to support it. Appendix, Ex. A at 30. The decision creates a double standard – *e.g.*, the term “debt” is *not* deceptive when used in efforts to collect an overdue cable bill, but *is* deceptive in efforts to collect payment for pirated cable programming⁴ – precisely the patchwork the Legislature wished to avoid by directing courts to be “guided by” federal law on similar matters.

The Court of Appeals reasoned that the FDCPA “does not regulate the collection of subrogation interests, whether ‘alleged’ or reduced to judgment. It specifically regulates only the collection of consumer debt or alleged debt arising from a ‘transaction.’” Appendix, Ex. A at 17. That does not mean, however, that the Court of Appeals was free to *disregard* FDCPA’s definition of debt in addressing the collection of tort claims.

³ *See also* Washington Collection Agency Act (“CAA”), RCW 19.16.100(ii) (“‘Debtor’ means any person owing or *alleged to owe* a debt.”) (emphasis added).

⁴ This example, assumes, *arguendo*, that the person pirating the cable programming is entitled to CPA protection. This assumption is wrong for reasons discussed in Section A above.

See RCW 19.86.920. The purpose of the CPA was “to complement the body of federal law governing . . . unfair, deceptive, and fraudulent acts or practices” with harmonious and consistent state regulation on similar matters, not to generate new unpredictable legal standards in response to each case. See *Blewett v. Abbott Lab.*, 86 Wn. App. 782, 788, 938 P.2d 842 (1977) (“In directing courts to be ‘guided by’ federal law, the Legislature presumably intended to minimize conflict . . . and to avoid subjecting Washington businesses to divergent regulatory approaches to the same conduct.”)

A consumer who fails to pay a bill owes a debt even if the bill is disputed. 15 U.S.C. § 1692a(5) (“The term ‘debt’ means any obligation or alleged obligation of a consumer to pay money . . . whether or not such obligation has been reduced to judgment.”). See also RCW 19.16.100(ii) (“‘Debtor’ means any person owing or alleged to owe a debt.”). The Court of Appeals was not free to abandon this definition in the context of collections of tortfeasor obligations that arise from *more culpable* conduct than non-payment of consumer obligations. *Blewett*, 86 Wn. App. at 788 (“Any departure from federal law . . . must be for a reason vested in our own statutes or case law and not in the general policy arguments . . .”).

Yet the Court of Appeals went so far as to declare the practice of referring to uninsured tortfeasors' obligations as debts that are "due" to be unfair or deceptive as a matter of law. This new standard can be reconciled neither with the federal law on "similar matters" nor with decisions by other courts that addressed identical claims. *Camacho v. Auto. Club of Southern California*, 142 Cal. App. 4th 1394, 1400, 48 Cal. Rptr. 3d 770 (Cal. Ct. App. 2006) (dismissing an identical claim for failure to identify any practice that is "unfair" under California's Business and Professions Code, Section 17200).⁵

The Court of Appeals dismissed the relevance of *Camacho* by incorrectly stating that the Section 17200 is focused only on "unfair competition." Appendix, Ex. A at 15. In reality, Section 17200 prohibits the same conduct that is unlawful under the CPA:

[A]nticompetitive conduct is best defined in terms of the policy and spirit of antitrust laws; the same cannot be said of a business practice that is "unfair" or "deceptive" in terms of Section 17200. That is, cases involving anticompetitive conduct move in a far smaller, and more clearly defined, universe than unfair or deceptive business practices.

⁵ Section 17200 provides: "As used in this chapter, unfair competition shall mean and include any unlawful, *unfair* or *fraudulent* business act or practice and *unfair, deceptive*, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code." (emphasis added).

Camacho, 142 Cal. App. 4th at 1403. Utilizing a test developed under Section 5 of the Federal Trade Commission Act, *Camacho* dismissed a claim identical to Ms. Panag's as being outside the broader universe of unfair or deceptive business practices. *Id.*

The FTC test used in *Camacho* “balance[es] generic considerations” – plaintiff’s injury, countervailing benefits to consumers, and plaintiff’s ability reasonably to avoid the injury – that are in no way foreign to the CPA. *See Camacho*, 142 Cal. App. 4th at 1404-05 (characterizing the test as “wide” and “suitably broad . . . in keeping with the ‘sweeping’ nature of section 17200”). *See also* RCW 19.86.920 (“[i]t is the intent of the legislature that this act shall not be construed to prohibit acts or practices which . . . are not injurious to the public interest . . .”). Because *Camacho* did not dispute that he drove without insurance, was at fault in the accident and caused damage to the insured driver,⁶ “it does not violate his rights to attempt to collect those damages. . . . The public is well served when an uninsured driver who was at fault responds to his or her obligations. The benefits of collecting such sums clearly outweigh the

⁶ Similarly, neither Ms. Panag nor Mr. Stephens disputed that they were involved in the accidents at issue or that they violated the Mandatory Liability Insurance statute. Ms. Panag disputed only the specific allocation of her fault. Mr. Stephens conceded that he was 100 percent at fault.

‘injury’ of having to pay a sum of money that is owed.” *Camacho*, 142 Cal. App. 4th at 1406.

The Washington public is equally well served when uninsured drivers promptly respond to their obligations without the need for litigation. The Legislature requires all drivers to maintain mandatory liability insurance. RCW 46.30.010 - .020(1)(a),(c). The insurer that pays its insured for damage caused by an uninsured driver is “entitled to the proceeds of any *settlement or judgment*” resulting from the exercise of its insured’s right of recovery. RCW 48.22.040(3) (emphasis added). The Washington CPA is not so unique as to warrant branding the same collection efforts from uninsured drivers that are lawful elsewhere – and that are consistent with public policy embodied in Chapter 46.30 RCW – as deceptive practices as a matter of law. *See Blewett*, 86 Wn. App. at 787 (“Washington courts have uniformly followed federal precedent in matters described under the Consumer Protection Act”). This Court should grant review to restore the CPA’s consistency with federal law on similar matters and common sense.

C. The Court of Appeals Reduced the “Injury to Business of Property” to a Meaningless Level That Approaches Strict Liability

“The [CPA], unlike the FDCPA and WCAA, is not a strict liability statute.” *Campion v. Credit Bureau Services, Inc.*, 206 F.R.D. 663, 675 (E.D. Wash. 2001). Yet the Court of Appeals reduced CPA’s injury element to a meaningless level that effectively reads it out of the CPA and approaches strict liability. If, as the Court of Appeals held, Ms. Panag met the CPA injury element by paying for parking, buying a postage stamp or ordering a credit report *after filing her complaint*, then anyone willing to spend a few dollars to “investigate” his or her claim can meet the CPA injury test – even if the investigation reveals no cognizable injury. This is not the law.

“Only a person ‘injured in his business or property by a violation of RCW 19.86.020 . . .’ may bring a private action.” *Hangman Ridge*, 105 Wn.2d 778. Whether a potential CPA claimant meets the injury element is determined *before* he or she walks into the attorney’s office complaining about wrongdoing, not afterwards, and does not depend on the cost of parking. In *Sign-O-Lite Signs, Inc. v. DeLaurenti Florists, Inc.*, 64 Wn. App. 553, 563-64, 825 P.2d 714 (1992), the court rejected the argument

that the costs incurred in pursuing a CPA claim established an injury to business or property under *Hangman Ridge*:

DeLaurenti's mere involvement in having to defend against Sign's collection action and having to prosecute a CPA counterclaim is insufficient to show injury to her business or property . . . To hold otherwise would be to invite defendants in most, if not all, collection actions to allege CPA violations as counterclaims.

See also Employers Reinsurance Corp. v. Mid-Continent Cas. Co., 358 F.3d 757, 767 (10th Cir. 2004) ("the expenses of litigation are never damages sued for in any case when the action is brought for the wrong itself. . . . They are not the natural and proximate consequence of a wrongful act . . ."); *Motorola, Inc. v. Fed. Express Corp.*, 308 F.3d 995, 1007 n.13 (9th Cir. 2002) ("costs . . . are not 'damages'").

The Court of Appeals made the same error. It failed to recognize that incidental expenses inherent in any litigation (*e.g.*, long-distance phone calls, postage, and parking) have nothing to do with, and cannot change, the merits of the plaintiff's claim. A plaintiff who pays for parking in a downtown garage does not have a bigger "injury" than the plaintiff who finds free parking or takes a bus. Whether the plaintiff has a cognizable CPA injury depends on the facts that what occurred *before* he or she set foot in the lawyer's office. As explained in *Sign-O-Lite*:

In *St. Paul Fire & Marine Ins. Co. v. Updegrave*, 33 Wn. App. 653, 656 P.2d 1130, 35 A.L.R. 4th 1 (1983) the court concluded that having to defend against a collection action and prosecute a counterclaim asserting a CPA violation was sufficient proof of injury under the CPA, though no injury to the claimants' business or property was ever alleged. . . . Given the *Hangman Ridge* injury requirement, that portion of *St. Paul's* holding is too broad. There must be some evidence, however slight, to show injury to the claimants' business or property.

Sign-O-Lite, 64 Wn. App. at 563.

Ms. Panag could identify no injury to business or property cognizable under the CPA. The sole expense items she claimed – a postage stamp, parking, and ordering a credit report six months after receiving the first letter from CCS and a month after filing the complaint – related to *investigating whether she had an injury*, not the injury itself. If the incidental costs of investigating whether one has suffered an “injury to business or property” could create injury that did not previously exist, the fourth element of a private CPA claim would be meaningless. “The injury involved need not be great, but it must be established.” *Hangman Ridge*, 105 Wn.2d at 792. The Court of Appeals’ decision invites abuse by erroneously equating the cost of investigation with injury. It warrants review and reversal.

V. CONCLUSION

The Court of Appeals' published decision transforms the CPA into an instrument of abuse that is unlimited in scope, unpredictable in application, and meaningless as to the showing of "injury to business or property." It warrants review and reversal.

DATED this 19th day of June 2007.

Respectfully submitted,



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Company of Washington

VI. APPENDIX

- A. Published Opinion in Cases No. 57068-4-I and 56625-3-I, filed on April 23, 2007.
- B. Summary of published Washington CPA cases decided after *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 719 P.2d 531 (1986).
- C. Uninsured Motorists, 2006 Edition, Report by Insurance Research Council, June 2006, ISBN. 978-1-56594-041-3.

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STOEL RIVES LLP

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

MICHAEL STEPHENS, on behalf of) NO. 57068-4-I
himself and all others similarly)
situated,)

Respondent,)

v.)

OMNI INSURANCE COMPANY, a)
foreign insurance company; and)
CREDIT CONTROL SERVICES, INC.)
d/b/a Credit Collection Services,)

Petitioners.)

RAJVIR PANAG, on behalf of herself) NO. 56625-3-I
and all others similarly situated,)

Respondent/
Cross-Appellant,)

v.)

FARMERS INSURANCE COMPANY)
OF WASHINGTON, a domestic)
insurance company, and CREDIT)
CONTROL SERVICES, INC., d/b/a)
Credit Collection Services,)

Appellants/
Cross-Respondents.)

PUBLISHED OPINION

FILED: April 23, 2007

BECKER, J. – At issue here is a credit collection agency's practice of sending aggressive notices on behalf of insurance companies in an attempt to recover subrogation interests from uninsured drivers. In each of these linked cases, notices styled as "formal collection notices" demanded immediate payment of an "amount due". We conclude the notices are deceptive and hold that the practice of sending them violates the Consumer Protection Act.

FACTS

These two appeals have been linked for consideration because the core issue is the same. Credit Collection Services, Inc., was a defendant in each case below, and the focus of each appeal is the notices sent by Credit to the plaintiffs. Counsel for the plaintiffs is the same in each case.

Stephens

In the first case, Michael Stephens (respondent on appeal) was the plaintiff below. Stephens rear-ended Carrine York's vehicle on June 9, 2003. The damage to her car was appraised at \$544.09. York had underinsured motorist coverage with Omni Insurance Company. Omni subtracted the deductible of \$100 and sent York a check for \$444.09.¹

Omni sent several letters to Stephens on August 5, 2003 asking him to get in touch with an Omni representative. One letter said, "We have been notified of the captioned loss. In order to properly investigate the accident, it is important

¹ Clerk's Papers at 212.

that I obtain your version of what happened." Another stated, "The investigation to date indicates that we may look to you for repayment of our insured's damages. . . . If you do not have insurance to protect you for this accident, we advise you to contact us within 30 days Your failure to respond within 30 days may result in a judgment against you and the suspension of your driving privileges."² Stephens did not respond to these letters.

Omni sent two similar letters to Stephens on October 10, 2003. The first letter stated that York had been paid \$444.09 for damage to her car and that Omni claimed a right to reimbursement from Stephens:

Our investigation into our insured's loss has determined that your auto was at fault for this accident, and under the terms of our policy we are making a claim against you for reimbursement of the amount we paid.

. . . If you do not have insurance for this accident, please contact the undersigned as soon as possible so that arrangements can be made to amicably settle this matter in a manner agreeable to all parties and to avoid any unnecessary legal action.

You have a right to dispute any or all of our claims. If you do not dispute it within 30 days of receiving this letter, Omni Automobile will assume that it is valid. You have a right to receive a copy of the repair estimate, a copy of the check that Omni Automobile paid to its insured, or to the repairer of the auto and copies of any or all other documents that verify the existence of our rights of subrogation.^[3]

The second letter reiterated that Omni was looking to Stephens for full reimbursement: "Since our investigation reveals that you are uninsured for this loss, we seek full reimbursement directly from you for all payments we have

² Clerk's Papers at 208, 210.

³ Clerk's Papers at 212.

made in this matter.”⁴ Stephens – who was not sure about his insurance coverage – responded to these letters by sending Omni his own check for \$444.09.

Six months passed. Omni made two more payments to York: \$5,112 for medical expenses and \$1,300 for bodily injury. Omni did not contact Stephens about these payments. Omni instead arranged to have its subrogation claim pursued by Credit Collection Services, Inc., a Delaware corporation licensed to collect debt in Washington.⁵ The notices sent by Credit constitute the practice alleged to be deceptive.

Credit began by sending a “formal collection notice” to Stephens on April 16, 2004. The notice specified \$6,412.00 as the “amount due”.⁶

SUBROGATION CLAIM	
REGARDING:	AMOUNT DUE:
OMNI INSURANCE	\$6,412.00

THIS IS A FORMAL COLLECTION NOTICE

You were involved in an incident which resulted in the above referenced damages being paid by our client. Please be advised that the amount reflected on this notice is an amount already incurred, and any further damages paid as a result of this incident will be added to this amount. Should this occur, you will be so advised.

Unless you can provide this office with evidence of insurance coverage that existed on the date of loss, our client will consider you financially responsible.

⁴ Clerk’s Papers at 214.

⁵ Clerk’s Papers at 21.

⁶ Clerk’s Papers at 74.

To avoid the possibility of legal action and/or license suspension (contingent upon applicable state law), you can make instant payment by check or credit card through our 24-hour toll-free touch tone service or by accessing our website @ www.ccspayment.com.

Stephens called Credit twice upon receiving this notice. "I did not understand how I could owe such a debt or why it was in 'collection'".⁷ Credit's telephone representatives told Stephens the notice represented amounts paid by Omni to York as a result of the accident. According to Stephens, one representative told him Credit had him in "collection" and "had the power to get money from me in a variety of different ways from whatever financial resources I had."⁸ Credit's notes reflect that Stephens "stated that he did not feel that he owed the balance stated in the letter."⁹

Credit sent Stephens a similar notice three weeks later. This second notice dated May 7, 2004 declared in large print: "ACTIVITY PENDING TEN (10) DAYS". The notice said: "You have failed to respond to our notice requesting full payment -or- evidence of insurance coverage that existed on the date-of-loss." The notice threatened consequences potentially including litigation and license suspension unless Stephens acted "immediately":

This office has been authorized to pursue full payment in accordance with both federal and state law(s) which could result in a law suit being filed against you and/or license suspension (contingent upon applicable state law). Be advised, state law

⁷ Clerk's Papers at 68.

⁸ Clerk's Papers at 69.

⁹ Clerk's Papers at 386.

requires that financial responsibility be maintained continuously throughout the registration period of your vehicle.
Act immediately, as your file is pending further action.^[10]

Soon after Stephens received the second notice, he wrote to Credit stating that he disputed the charges. He requested proof of payment showing the alleged amount due. Stephens also contacted his insurance company, GEICO. GEICO contacted Credit on May 19, 2004 to let them know that Stephens was insured on the loss. Thereafter Credit sent no more letters to Stephens.

Meanwhile, concerned that his credit rating was in jeopardy, Stephens consulted an attorney.¹¹ Stephens sued Omni and Credit in June 2004 for violating the Consumer Protection Act. He moved for summary judgment against both defendants. The court granted the motion as to liability and reserved ruling on the amount of damages. Appeal by Omni and Credit of the summary judgment ruling on liability is before this court on discretionary review.

Panag

In the second case, Rajvir Panag (respondent on appeal) was the plaintiff below. Panag was injured in a two car accident with Deven Hamilton on October 5, 2003. Panag was uninsured. Hamilton's insurer, Farmers Insurance Company, investigated and concluded that Panag was 40 percent at fault. Farmers paid Hamilton \$6,102.53 for property damage. There was a \$340 deductible. One month later Panag received from Credit Collection Services a

¹⁰ Clerk's Papers at 77.

¹¹ Clerk's Papers at 69.

"formal collection notice" on behalf of Farmers specifying the "amount due" as \$6,442.53.¹²

SUBROGATION CLAIM

REGARDING:	AMOUNT DUE:
FARMERS INSURANCE	\$6,442.53

THIS IS A FORMAL COLLECTION NOTICE

You were involved in an incident which resulted in the above referenced damages being paid by our client. Please be advised that the amount reflected on this notice is an amount already incurred, and any further damages paid as a result of this incident will be added to this amount. Should this occur, you will be so advised.

Unless you can provide this office with evidence of insurance coverage that existed on the date of loss, our client will consider you financially responsible.

To avoid the possibility of legal action and/or license suspension (contingent upon applicable state law), you can make instant payment by check or credit card through our 24-hour toll-free touch tone service or by accessing our website @ www.ccspayment.com.

A representative from Farmers later admitted that the purported "amount due" was a "mistake" as it should have been adjusted to reflect that Farmers' determination of Panag's liability was 40 percent.¹³

Three weeks later, Credit sent another notice of "Subrogation Claim Regarding: Farmers Insurance", this one enclosed in a black border containing in large font the words, "ATTENTION – ATTENTION – ATTENTION –ATTENTION – Enclose Bottom Portion with Your Payment". Again, the notice set forth

¹² Clerk's Papers at 168.

¹³ Clerk's Papers at 600.

\$6,442.53 as the "AMOUNT DUE". It declared in larger print: "ACTIVITY PENDING TEN (10) DAYS" and then stated, "You have failed to respond to our notice requesting full payment -or- evidence of insurance coverage that existed on the date-of-loss."¹⁴ The notice demanded immediate action to avoid litigation and license suspension:

This office has been authorized to pursue full payment in accordance with both federal and state law(s) which could result in a law suit being filed against you and/or license suspension (contingent upon applicable state law). Be advised, state law requires that financial responsibility be maintained continuously throughout the registration period of your vehicle.

Act immediately, as your file is pending further action.^[15]

Credit sent Panag a third notice on December 22, 2003. The words "Western Union" were printed at the top although the record does not indicate the notice was sent as a telegram. This notice threatened additional consequences for Panag should she fail to pay the "amount due" of \$6,442.53:

IF CREDIT COLLECTION SERVICES CANNOT EFFECT RECOVERY, A REPORT WILL BE SENT TO OUR CLIENT STATING "VOLUNTARY COLLECTION DEEMED IMPOSSIBLE".

FURTHER OPTIONS INCLUDE:

- 1) PERFORMING AN ASSET SEARCH IN AN EFFORT TO PROTECT OUR CLIENT'S LEGAL INTERESTS IN THIS MATTER.
- 2) LITIGATION – WHICH COULD INCLUDE INTEREST, COURT COSTS AND SHERIFF FEES.
- 3) NOTIFY THE DEPARTMENT OF MOTOR VEHICLES OF YOUR APPARENT FAILURE TO COMPLY WITH THE FINANCIAL RESPONSIBILITY LAW, WHICH CAN LEAD TO LICENSE SUSPENSION (CONTINGENT

¹⁴ Clerk's Papers at 170.

¹⁵ Clerk's Papers at 170.

UPON APPLICABLE STATE LAW) UNDER THE
RULES AND REGULATIONS GOVERNED BY
STATUTE.

- 4) PURSUE COLLECTION THROUGH ANY OTHER
METHOD PERMITTED UNDER STATE OR FEDERAL
LAW.

*****TO ENSURE PROPER CREDIT, D-E-T-A-C-H THE
BOTTOM PORTION OF THIS NOTICE WITH YOUR PAYMENT
TO: *****

C.C.S.
PAYMENT PROCESSING CENTER
[Address in Boston, Massachusetts][¹⁶]

Panag was "scared" because she "wasn't sure what the debt was about and what they were trying to collect and the amount."¹⁷ She contacted the attorney who was already representing her in connection with her own personal injury claim arising from the accident. In May 2004, she filed a class action complaint alleging that Farmers and Credit had violated the Consumer Protection Act. Farmers and Credit both moved for summary judgment. The court granted their motions. The court concluded that although the notices were deceptive, Panag did not suffer an injury. She had not actually made payment in response to the notice, she had not shown that her credit was actually affected, and the minimal expense of contacting her attorney about the notices was insignificant because "she was already seeing an attorney" in connection with the accident.¹⁸ The court determined, however, that even after the entry of a final judgment of

¹⁶ Clerk's Papers at 171.

¹⁷ Clerk's Papers at 711.

¹⁸ Clerk's Papers at 320-325, Court's Oral Ruling, June 10, 2005.

dismissal as to Panag's claim, counsel for Panag should be given additional time to discover whether other persons who had received similar notices were interested in joining the action. Farmers and Credit appeal the ruling granting additional time to discover other potential plaintiffs. Panag cross-appeals the decision to dismiss her case on summary judgment.

CONSUMER PROTECTION ACT

The Consumer Protection Act declares unlawful "unfair or deceptive acts or practices in the conduct of any trade or commerce". RCW 19.86.020. A private plaintiff must prove five elements: (1) unfair or deceptive act or practice; (2) occurring in trade or commerce; (3) public interest impact; (4) injury to plaintiff in his or her business or property; (5) causation. Hangman Ridge Training Stables v. Safeco Title Ins. Co., 105 Wn.2d 778, 780, 719 P.2d 531 (1986).

These appeals put all five elements at issue.

Summary judgment is proper only when pleadings, depositions, admissions, and affidavits show there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. On review, we engage in the same inquiry as the trial court. We consider facts in the light most favorable to the nonmoving party. Review is de novo. CR 56(c); Fidelity Mortgage v. Seattle Times, 131 Wn. App. 462, 467, 128 P.3d 621 (2005).

Deceptive Act

The Act does not define the term “deceptive”, but implicit in that term is “the understanding that the actor misrepresented something of material importance.” Hiner v. Bridgestone/Firestone, Inc., 91 Wn. App. 722, 730, 959 P.2d 1158 (1998), rev’d on other grounds, 138 Wn.2d 248 (1999). To prove that a practice is deceptive, neither intent to deceive nor actual deception is required. The question is whether the conduct has the capacity to deceive a substantial portion of the public. Hangman Ridge, 105 Wn.2d at 785-86. Whether particular actions are deceptive is reviewable as a question of law. Leingang v. Pierce County Medical Bureau, 131 Wn.2d 133, 150, 930 P.2d 288 (1997).

The plaintiffs contend Credit’s notices have the capacity to deceive because they look like debt collection notices, and the uninsured drivers who receive them may be misled into paying the “amount due” as if it were based on a debt they actually owed rather than a tort claim. The defendants respond that the notices are not deceptive because the information conveyed is accurate: the insurance companies had valid subrogation claims based on sums paid to their insureds.

A defendant need not affirmatively state an untrue fact to have committed a deceptive practice. For example, the practice of including miscellaneous service charges such as fax fees on a mortgage payoff statement has the capacity to deceive because it creates the misleading appearance that the

mortgage cannot be released unless the miscellaneous charges (unrelated to the mortgage) are paid. Dwyer v. J.I. Kislak Mortgage, 103 Wn. App. 542, 547, 13 P.3d 240 (2000). A closing agent's employment of a non-attorney to prepare closing documents is deceptive where the sellers could have reasonably believed the agents had legal expertise. Bowers v. Transamerica Title Ins. Co., 100 Wn.2d 581, 592, 675 P.2d 193 (1983). Threatening debtors with imminent legal action in "Trans-O-Grams", a format designed to resemble telegrams, is deceptive because it misrepresents the urgency of the communication. Trans World Accounts, Inc. v. FTC, 594 F.2d 212, 215-216 (9th Cir. 1979).

The plaintiffs do not allege, and we do not hold, that it is deceptive for a tort claimant or the claimant's agent to correspond with an alleged tortfeasor and demand payment of a specific sum. But when a notice from a credit collection agency arrives with the message that it is a "Formal Collection Notice" for an "amount due", a recipient can reasonably be expected to perceive it as notice of a debt that must be paid. The increasingly urgent tone ("ATTENTION!") and message ("ACTIVITY PENDING TEN (10) days") suggests that the recipient's situation is becoming worse with each passing day when in fact there is no urgency. The basis of the alleged "amount due" is an unliquidated tort claim, not an unpaid consumer debt. Yet the notices from Credit do not even explain what the "amount due" is for or how it was calculated. There is no reference to the underlying accident, no supporting documentation, and no suggestion of a right

to dispute the claim.

Credit's notices demand payment for a "subrogation claim" – a technical term not easily understood – in a manner indicating that the driver's obligation to pay is already fixed beyond reasonable dispute and immediate payment is the only reasonable course of action. But when Credit found out that Stephens actually did have insurance through GEICO, Credit sent GEICO "a notice of subrogation" that took a different tone. "Their [Omni's] investigation indicates that liability rests with your insured. . . . kindly advise this office immediately of your position with regard to this claim. All necessary supporting documentation is attached. Thank you in advance for your anticipated cooperation."¹⁹ The letter to GEICO accurately reflects the reality that the demand is based on a one-sided assessment of tort liability. Credit's notice to Stephens about the same claim—"This is a formal collection notice" of an "amount due"—does not reflect that reality. The contrast illuminates the deceptive nature of the notices designed to be sent to uninsured drivers, who are presumably far less sophisticated about the handling of subrogation claims than an insurance company is, and far less aware of the many factual and legal variables that can affect the value of a tort claim and make it open to dispute.

¹⁹ Clerk's Papers at 539. Reinforcing the impression of debt collection, the "formal collection notices" were sent under the letterhead of "Credit Collection Services" and bore the seals of two collection agency associations. The notice to GEICO bore no seals and was sent under the letterhead of "The CCS Companies."

Panag's case in particular illustrates how characterizing an unliquidated claim as an "amount due" has the capacity to deceive. Although Farmers estimated Panag's comparative fault at 40 percent, the "amount due" demanded by Credit was 100 percent of the damage to the other vehicle. The notice included no information about how the "amount due" was calculated that would have made the recipient aware of this discrepancy.

Like the mortgage payoff statement in Dwyer that included charges unrelated to the mortgage, the escrow practices in Bowers that had the patina of legal expertise without the genuine article, and the "Trans-o-Grams" sent by the debt collection agency in Trans World Accounts, the notices sent by Credit were materially misleading even though they contained some accurate information. They created an impression of a debt owed and sent to collection when in reality all the "creditor" had was a tort claim. This was deceptive.

Our conclusion on this point is not changed by Camacho v. Automobile Club of Southern California, 142 Cal. App. 4th 1394 (Cal. Ct. App. 2006), a case defendants have cited as supplemental authority. The plaintiff in that case complained of a virtually identical practice under California's law against unfair competition. The trial court entered judgment for the defendants and the court of appeals affirmed.

The issue in Camacho was presented by a motion for judgment on the pleadings. The court assumed as factual the plaintiff's allegation that the collection agency had designed notices and threats "to dupe the recipient to pay whatever sums of money" the insurance company and collection agency said were owed. Camacho, 142 Cal. App. 4th at 1399. The Camacho court nevertheless concluded as a matter of law that the practice was not "unfair" under California's statute. Here, defendants suggest that Camacho is persuasive authority on the issue of whether the practice is "deceptive". We disagree.

The focus of California's statute is "unfair competition." See Camacho, 142 Cal. App. 4th at 1399-1400 (discussing § 17200 of California's Business and Professions Code). Our Consumer Protection Act more broadly attacks "unfair or deceptive acts or practices in the conduct of any trade or commerce". RCW 19.86.020 (emphasis added). As a result, California's consumer protection jurisprudence as set forth in Camacho is substantially different from Hangman Ridge. Whether a deceptive consumer practice is "unfair" is determined by the court using a three-part test borrowed from federal law defining the term: "(1) the consumer injury must be substantial; (2) the injury must not be outweighed by any countervailing benefits to consumers or competition; and (3) it must be an injury that consumers themselves could not reasonably have avoided." Camacho, 142 Cal. App. 4th at 1403. Considering these factors, the court determined the business practice was not unfair. First, because plaintiff

Camacho admitted that he was at fault, he was liable for the damages, so he could not be injured by efforts to collect them. Second, even if injury occurred, the desirability of collecting sums actually owed was a countervailing benefit.

"The public is well served when an uninsured driver who was at fault responds to his or her obligations." And finally, Camacho could have reasonably avoided being the recipient of the dunning letters by obtaining insurance. Camacho, 142 Cal. App. 4th at 1406.

Camacho essentially holds that deceptive notices are not actionable in a case where the driver who complains about them admits to being at fault and uninsured. Under Hangman Ridge, however, a deceptive notice is actionable as long as the other four elements are established.

Washington's Act does incorporate a yardstick of reasonableness by providing that practices which are "reasonable in relation to the development and preservation of business or which are not injurious to the public interest" are not violations. RCW 19.86.920. The "reasonableness defense" is appropriately submitted as a jury question if there are material issues of fact about its application. See Travis v. Wash. Horse Breeders Ass'n, 111 Wn.2d 396, 408-09, 759 P.2d 418 (1988). It is not a factor used in deciding whether a practice is deceptive.

The Act is to be "liberally construed that its beneficial purposes may be served." RCW 19.86.920. The "laudable purpose" of the Act is to protect

Washington citizens from unfair and deceptive trade and commercial practices. Dwyer, 103 Wn. App. at 547-48. The Dwyer court explained that its holding “protects Washington citizens by ensuring that they are clearly and accurately informed about the nature and extent of their obligations” under a mortgage agreement. “Our holding does not infringe on Kislak’s right to charge a fax fee. It merely forecloses the ability to do so in a deceptive manner.” Dwyer, 103 Wn. App. at 548. Similarly here, our conclusion that Credit’s notices are deceptive protects Washington citizens by ensuring that they are clearly and accurately informed about the nature and extent of their obligations arising from being involved in an accident while driving a motor vehicle. Our holding does not infringe on the right of insurance companies to recover subrogation interests or to employ collection agencies to do so. But they may not overreach by using deceptive means to accomplish that objective.

Farmers contends that as a matter of law, representing a subrogation interest as an “amount due” cannot be deceptive because the collection of “alleged” debt is specifically contemplated by the federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692. This argument is unfounded. The federal act does not regulate the collection of subrogation interests, whether “alleged” or reduced to judgment. It specifically regulates only the collection of consumer debt or alleged debt arising from a “transaction”.²⁰ A transaction means a

²⁰ “The term ‘debt’ means any obligation or alleged obligation of a

consumer obligation arising out of "consensual or contractual arrangements, not damage obligations thrust upon one as a result of no more than her own negligence." Hawthorne v. Mac Adjustment, 140 F.3d 1367, 1369-71 (11th Cir. 1998). The same is true of the consumer protection provided by Washington's Collection Agency Act, which regulates the collection of "any obligation for the payment of money or thing of value arising out of any agreement or contract, express or implied." RCW 19.16.100(5) (emphasis added). Unlike the collection of consumer debt, the collection of subrogation claims or tort claims is a type of activity that appears to be entirely unregulated.

Farmers complains generally that the plaintiffs are trying to use the Consumer Protection Act to make an end-run around regulatory statutes. The fact that a business operates in a highly regulated arena does not mean that its activities are exempt from liability under the Consumer Protection Act. That argument was made on behalf of mobile home park landlords in Ethridge v. Hwang, 105 Wn. App. 447, 457, 20 P.3d 958 (2001). The landlord argued that mobile home tenancies should be exempt from the Consumer Protection Act because of the specific regulations already found in the Mobile Home Landlord Tenant Act, RCW Ch. 59.20. We rejected this contention, noting that "other heavily regulated areas of trade and commerce, such as the legal profession and

consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment." 15 U.S.C. § 1692a(5).

the banking industry, are subject to the CPA". Ethridge, 105 Wn. App. at 457, citing Short v. Demopolis, 103 Wn.2d 52, 60-61, 691 P.2d 163 (1984). The area of debt collection is heavily regulated because of the "abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors." 15 U.S.C. § 1692(a). The absence of regulation specifically directed at collection of subrogation claims does not mean that debt collection practices used in the recovery of subrogation claims are exempt from suit under the Act, and it does not undermine our conclusion that the practice here is deceptive.

The Act does create a safe harbor for actions "permitted" by state and federal regulatory bodies and officers:

Nothing in this chapter shall apply to actions or transactions otherwise permitted, prohibited or regulated under laws administered by the insurance commissioner of this state, the Washington utilities and transportation commission, the federal power commission or actions or transactions permitted by any other regulatory body or officer acting under statutory authority of this state or the United States.

RCW 19.86.170. But Farmers has not identified any regulatory entity that "permits" the collection practice at issue in this case. The most that can be said is that no regulatory entity has prohibited it. Farmers contends the collection scheme cannot be deemed deceptive because the insurance commissioner has not labeled it as such. This does not mean the commissioner has permitted it. In Leingang, the case on which Farmers relies, the claimant argued that a policy exclusion was necessarily an unfair trade practice because the insurance

commissioner had not affirmatively approved it. The Supreme Court rejected this argument, finding no significance in the commissioner's silence. Leingang, 131 Wn.2d at 154. The commissioner's silence is equally insignificant in the context of these cases.

TRADE OR COMMERCE

Deceptive acts "in the conduct of any trade or commerce" are unlawful. RCW 19.86.020. Trade and commerce "shall include the sale of assets or services, and any commerce directly or indirectly affecting the people of the state of Washington." RCW 19.86.010(2). The Legislature intended these terms to be construed broadly. Hangman Ridge, 105 Wn.2d at 785.

The defendants generally contend that the plaintiffs cannot satisfy the "trade or commerce" element because the plaintiffs were not involved in a consumer transaction. In support of this argument they cite the federal Fair Debt Collection Practices Act. But the federal statute, as noted above, does not apply here. It applies only when an effort is made to collect a debt, i.e., an obligation arising from bilateral agreement. In contrast, our Consumer Protection Act applies to "any" trade or commerce affecting the people of the state of Washington, directly or indirectly. RCW 19.86.010(2). It shows "a carefully drafted attempt to bring within its reaches every person who conducts unfair or deceptive acts or practices in any trade or commerce." Short v. Demopolis, 103 Wn.2d at 61.

The sale of Credit's collection services to Omni and Farmers indisputably occurred in trade or commerce. Credit contends this commerce did not affect the "consuming public" because Stephens and Panag are not consumers and therefore they lack standing to invoke the protection the Act affords to consumers.

Neither the Act nor Hangman Ridge mentions "the consuming public" or the idea of consumption as a limitation on the definition of "trade or commerce". Indeed, it is well settled that a consumer relationship is not a prerequisite for standing. See, e.g., Escalante v. Sentry Ins. Co., 49 Wn. App. 375, 386-88, 743 P.2d 832 (1987) (estate of passenger in car accident had standing to sue the driver's insurer for bad faith in violation of the Act even though she had no consumer relationship to the company), disapproved on other grounds by Ellwein v. Hartford Accident & Indem. Co., 142 Wn.2d 76, 781, n.10, 15 P.3d 640 (2001). Escalante was cited with approval in Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 312, 858 P.2d 1054 (1993).

Credit contends that under Fisons, a plaintiff who is not a consumer must at least stand in the shoes of someone who is. In Fisons, a physician sued a drug company for unfair and deceptive practices in failing to disclose the dangers of a drug. The drug company argued that the physician lacked standing because he was not the purchaser of the drug. The Supreme Court flatly rejected this argument based on the plain language of the statute: "Although the consumer protection statutes of some states require that the injured person be the same person who

purchased goods or services, there is no language in the Washington act which requires that a CPA plaintiff be the consumer of goods or services.” Fisons, 122 Wn.2d at 313.

In the next paragraph, by way of a supplemental rationale, the court recognized that the physician was well situated to prosecute the drug company’s failure to give proper warnings:

Additionally, in examining the nature of the relationship between a drug manufacturer, a prescribing physician and a patient, it is the physician who compares different products, selects the particular drug for the ultimate consumer and uses it as a tool of his or her professional trade. Under the learned intermediary doctrine, a drug company fulfills its duty by giving warning regarding prescription drugs to the physician rather than to the patient. This unique relationship results in the physician being comparable to the ordinary consumer in other settings. Some cases have concluded that it is the physician who stands in the shoes of the “ordinary consumer” of the drug. Because of this unique relationship, the drug company targets its marketing efforts toward the physician, not toward the patient. The physician, therefore, is a logical person to be the “private attorney general” under RCW 19.86.090. We therefore conclude that Dr. Klicpera did have standing to bring a CPA claim, and that the trial court did not err in submitting this claim to the jury.

Fisons, 122 Wn.2d at 313 (footnotes omitted). Credit argues that the paragraph quoted above implicitly requires that a plaintiff who is not a consumer must at least be in a position to represent the interests of an “ordinary consumer”.

This court has cited the second Fisons rationale in State Farm Fire & Cas. Co. v. Huynh, 92 Wn. App. 454, 460, 962 P.2d 854 (1998) (“an insurance company is a logical party to be the private attorney general because it stands in the shoes

of its premium-paying consumers who are affected by false billings from doctors.”). See also First State Ins. v. Kemper Nat'l Ins., 94 Wn. App. 602, 609-10, 971 P.2d 953 (1999) (excess insurer may assert a Consumer Protection Act claim which the insured could have brought against the primary insurer). But no case has held it indispensable for a plaintiff to be a representative of someone who has a consumer relationship with the defendants. Such a holding would be inconsistent with our recent decision in Holiday Resort Community Association v. Echo Lake Associations, LLC, 134 Wn. App. 210, 219-220, 135 P.3d 499 (2006). The defendant in that case had no contractual or statutory relationship with the tenant plaintiffs. This court, citing the Act's rule of liberal construction as well as Short, Fisons, Escalante, and Huynh, concluded that it was error to dismiss the case for lack of standing. “As a general rule, and as a matter of legislative intent, neither the CPA nor case law require privity of contract in order to bring a CPA claim alleging an unfair or deceptive act or practice.” Holiday Resort, 134 Wn. App. at 219. See also Northwest Airlines, Inc. v. The Ticket Exchange, Inc., 793 F. Supp. 976, 979 (W.D.Wash. 1992) (holding that once Northwest Airlines established all Hangman Ridge elements, it “need not prove it was a consumer”).

The Act simply does not require a consumer relationship as a prerequisite for standing. It does not identify the “consuming public” as the entity to be protected. “Any person who is injured in his or her business or property by a violation of RCW 19.86.020 . . . may bring a civil action in the superior court”.

RCW 19.86.090 (emphasis added). In Hangman Ridge the Supreme Court described a "successful plaintiff" as "one who establishes all five elements of a private CPA action." Hangman Ridge, 105 Wn.2d at 795 (emphasis added). The concerns that typically underlie the issue of "standing" are already addressed by these elements, particularly the limitations imposed by the need to prove injury and public interest impact. Fisons did not add a sixth element requiring proof of an underlying consumer transaction.

In this case, it is the absence of an underlying consumer transaction that makes Credit's notices deceptive. They tend to create the impression that the recipient is a debtor when that is not so. The recipient is a logical "private attorney general" to argue that such deception is injurious to the public interest.

Because Credit conducts commerce with Omni and Farmers, and their commerce directly or indirectly affects people of the State of Washington including uninsured drivers, we conclude that Credit's practice of sending the notices is one that occurred in trade or commerce.

PUBLIC INTEREST IMPACT

Even a private plaintiff must "show that the acts complained of affect the public interest." This element fulfills the legislative statement of purpose, that the Act "shall not be construed to prohibit acts or practices which . . . are not injurious to the public interest". Hangman Ridge, 105 Wn.2d at 788; RCW 19.86.920.

This is not a case where the public interest element is satisfied per se by a showing of conduct in violation of a statute containing a specific legislative declaration of public interest impact. Whether the public has an interest is therefore an issue to be determined by the trier of fact. The factors to be considered will depend upon the context in which the alleged acts were committed. Hangman Ridge, 105 Wn.2d at 789-790. For example, where the acts complained of involve "essentially a consumer transaction" such as the sale of goods, the following five factors are relevant:

(1) Were the alleged acts committed in the course of defendant's business? (2) Are the acts part of a pattern or generalized course of conduct? (3) Were repeated acts committed prior to the act involving plaintiff? (4) Is there a real and substantial potential for repetition of defendant's conduct after the act involving plaintiff? (5) If the act complained of involved a single transaction, were many consumers affected or likely to be affected by it?

Hangman Ridge, 105 Wn.2d at 790. Where the complaint involves "essentially a private dispute" such as the provision of professional services, different factors are involved:

(1) Were the alleged acts committed in the course of defendant's business? (2) Did defendant advertise to the public in general? (3) Did defendant actively solicit this particular plaintiff, indicating potential solicitation of others? (4) Did plaintiff and defendant occupy unequal bargaining positions?

Hangman Ridge, 105 Wn.2d at 790-791. No one factor is dispositive, nor is it necessary that all be present. Hangman Ridge, 105 Wn.2d at 791. In some cases the public interest element may be satisfied even though "a neat distinction

between consumer and private dispute is not workable.” Nordstrom, Inc. v. Tampourlos, 107 Wn.2d 735, 742, 733 P.2d 208 (1987).

The defendants would prefer to characterize these cases as private disputes. But even though the plaintiffs were not consumers, the relevant factors are those used for evaluating consumer transactions because they show how the practice has the potential of affecting large numbers of people. However the dispute arises, “it is the likelihood that additional plaintiffs have been or will be injured in exactly the same fashion that changes a factual pattern from a private dispute to one that affects the public interest.” Hangman Ridge, 105 Wn.2d at 790.

The defendants do not and cannot seriously dispute that the sending of “formal collection notices” overstating subrogation claims as “amounts due” is a practice with a real and substantial potential for repetition. Nothing in the record suggests that these two cases are unique or isolated. The use of an identical scheme in California is reflected in Camacho. The notices received by Stephens and Panag appear to be form letters. Evidence in the record shows that Omni and Farmers frequently contract with collection agencies to collect money from drivers who have been involved in accidents with their insureds. Credit made a power point presentation to Farmers soliciting this type of business and representing that Credit’s “subrogation coverage services” had been effective in

realizing recoveries.²¹ The presentation included the display of samples of a “formal collection notice” and a notice with a Western Union logo.

We conclude the practice complained of by Panag and Stephens satisfies the public interest impact element.

INJURY AND CAUSATION

The plaintiff must have been “injured in his or her business or property” by the deceptive act. RCW 19.86.090. The defendants generally contend Panag and Stephens cannot satisfy this element because neither one of them was actually induced to pay the “amount due” demanded by Credit’s notices. Each responded to Credit’s notices by obtaining advice of counsel. GEICO eventually made payment on behalf of Stephens. Panag was able to receive payment for her own injuries.

Stephens attributes several types of injury to the receipt of the “formal collection notice” from Credit—time lost from work and travel costs involved in consulting an attorney, the expense of purchasing a credit report (\$49.95), and \$9.95 per month he spent to sign up for a credit watch service after he filed suit.²² The trial court found Stephens had established the injury element as a matter of law, but reserved ruling on the precise amount of damages. When Panag received the notices from Credit, she already had an attorney who was representing her in matters connected with the underlying accident. She alleged

²¹ Clerk’s Papers at 592-595.

²² Clerk’s Papers at 71.

that she incurred expense to obtain a credit report and to mail Credit's notices to her attorney. A different trial court dismissed Panag's claim on summary judgment on the basis that these expenses were insufficient to establish the element of injury.

The Supreme Court has explained that the element of injury does not require proof of monetary damages:

In Hangman Ridge we held that while the injury need not be great, it must be established. In Nordstrom, Inc. v. Tampourlos, 107 Wn.2d 735, 733 P.2d 208 (1987), we distinguished between the terms "injury" and "damages" and held that "[t]his distinction makes it clear that no monetary damages need be proven, and that nonquantifiable injuries, such as loss of goodwill would suffice for this element of the Hangman Ridge test." The fact that the Act allows for injunctive relief bolsters the conclusion that injury without specific monetary damages will suffice. A loss of use of property which is causally related to an unfair or deceptive act or practice is sufficient injury to constitute the fourth element of a Consumer Protection Act violation.

Mason v. Mortgage Am., Inc., 114 Wn.2d 842, 854, 792 P.2d 142 (1990)

(citations in footnotes omitted).

The Act speaks of injury to "business or property". Thus, mental distress, embarrassment and inconvenience alone do not establish injury. But the scope of injury to "property" is especially broad and is not restricted to commercial or business injury. Keyes v. Bollinger, 31 Wn. App. 286, 296, 640 P.2d 1077 (1982). When a misrepresentation causes inconvenience that deprives the claimant of the use and enjoyment of his property, the injury element is satisfied.

See Tallmadge v. Aurora Chrysler Plymouth, Inc., 25 Wn. App. 90, 93-94, 605

P.2d 1275 (1979), cited in Mason, 114 Wn.2d at 854 n.19.

Credit inaccurately contends the plaintiffs are claiming only emotional injury, i.e. fear of damage to their credit records. The injury they claim is the time and expense of investigating their fear of damaged credit, not the fear itself. "The injury element will be met if the consumer's property interest or money is diminished because of the unlawful conduct even if the expenses caused by the statutory violation are minimal." Mason, 114 Wn.2d at 854. Costs incurred in investigating the effect of an unfair or deceptive act are sufficient to establish injury. See Huynh, 92 Wn. App. at 470.

The defendants contend the plaintiffs' expenses related to obtaining legal advice did not constitute injury because the advice they received was in the context of the present litigation. They rely on Sign-O-Lite Signs v. DeLaurenti Florists, 64 Wn. App. 553, 564, 825 P.2d 714 (1992). In that case a maker of signs deceptively induced a florist to sign a six-year lease for a sign and then sued her for the entire inflated cost when she refused to make the monthly payments. The florist counterclaimed and the jury found a violation of the Consumer Protection Act. On appeal the signmaker unsuccessfully argued that the florist had not established an injury. This court found the injury element established by evidence that dealing with the dispute took up so much of the florist's time that she was unable to tend to her store the way she normally would have. Sign-O-Lite, 64 Wn. App. at 564. But if she had relied solely on her

involvement with the litigation precipitated by the dispute, the evidence would have been insufficient:

Here, DeLaurenti's mere involvement in having to defend against Sign's collection action and having to prosecute a CPA counterclaim is insufficient to show injury to her business or property, contrary to the trial court's conclusion. To hold otherwise would be to invite defendants in most, if not all, routine collection actions to allege CPA violations as counterclaims.

Sign-O-Lite, 64 Wn. App. at 564.

The concerns underlying this holding in Sign-O-Lite are not present here because the collection Credit was attempting was not "routine" and the plaintiffs were not already defending a collection suit when they received the deceptive notices. The expenses Panag incurred in consulting her attorney were caused by her receipt of the notices, not by the accident itself, and thus cannot be seen as inhering in her personal injury claim. In addition, both Panag and Stephens paid for credit reports. However minimal these costs, we conclude the plaintiffs incurred them to find out whether they actually owed a debt in the "amount due" and to determine how to respond. This was sufficient to establish an injury caused by the deceptive practice.

In summary, we conclude both Panag and Stephens presented evidence sufficient to establish each of the five elements for violation of the Consumer Protection Act. The trial court erred in dismissing Panag's claim. Because the evidence is undisputed with respect to Stephens' claim against Credit, the trial court did not err in granting him summary judgment on that claim.

OMNI'S LIABILITY TO STEPHENS

In the Stephens case, the trial court entered summary judgment as to liability against Omni as well as Credit. Omni contends that liability for the letters, if any, should be imposed only on Credit.

The trial court did not find fault, nor do we, with the letters Omni sent before recruiting Credit's assistance. Stephens contends that Omni's violation of the Act arises from its decision to hire a professional debt collector while fully realizing that no debt had yet been established. But the practice of referring a subrogation interest to a debt collector does not by itself have the capacity to deceive a substantial portion of the public. Credit could have sent out letters like Omni's.

Stephens argues that Omni and Credit were joint tortfeasors, but in this record there is no evidence of the collaboration or concerted action needed to establish that relationship. See Elliott v. Barnes, 32 Wn. App. 88, 90, 645 P.2d 1136 (1982). Stephens does not contradict Omni's David Quigley who declares that Omni did not suggest or review the wording of Credit's letters:

Omni retained Credit Collection Services to pursue recovery of its subrogation claims for the uninsured motorist benefits paid under Ms. York's policy. Omni referred the matter to CCS by sending it a copy of the medical bills and supporting documentation regarding Ms. York's claim. Omni has no relationship to CCS and retained them as an independent contractor. After sending these materials to CCS, Omni had no more involvement in CCS's efforts to collect the subrogation claim. Specifically, Omni does not exercise control over how CCS pursues recovery of subrogation claims. For example, Omni does not review letters or notices sent

by CCS and has no input or involvement in wording, typeface, or format of these letters. Once a matter is referred to CCS, CCS has sole discretion over collection of the claim. CCS has sole discretion over whether to compromise the claim or agree to payment plans.^[23]

The record likewise fails to support Stephens' argument that Omni was a concurrent tortfeasor. Concurrent tortfeasors are those whose independent acts breaching separate duties, concur to produce the injury. Seattle First Nat'l Bank v. Shoreline Concrete Co., 91 Wn.2d 230, 235, 588 P.2d 1308 (1978). The mere referral of subrogation claims to Credit breached no duty.

Stephens also contends that Omni was vicariously liable for Credit's acts, either as a joint venturer or on the theory that Credit was Omni's agent. But taking the evidence in the light most favorable to Omni, Omni had no right of control over Credit's means of collection. The right to control is indispensable to vicarious liability. See Adams v. Johnston, 71 Wn. App. 599, 610-611, 860 P.2d 423 (1993) (joint venturers must have an equal right of control); Kroshus v. Koury, 30 Wn. App. 258, 267, 633 P.2d 909 (1981) (principal liable only for agent's activities over which principal has a right of control). Because Stephens has not shown that Omni controlled any aspect of notices sent by Credit, there was no basis upon which to impose vicarious liability. We conclude the trial court erred by granting summary judgment to Stephens in his claim against Omni.

²³ Clerk's Papers at 216-217 (Declaration of David Quigley).

DENIAL OF CONTINUANCE

Credit assigns error to the trial court's refusal to continue the hearing on the motion for summary judgment in the Stephens case.

The court signed a stipulated discovery and motions schedule in May 2005. The order scheduled the deposition of Stephens for July 6, 2005, and it scheduled oral argument on all summary judgment motions for August 12, 2005. Later, with agreement of the parties, the court reset the date for oral argument to September 16, 2005. Stephens filed his motion for summary judgment in mid-August and noted the motion for argument on September 16 in accordance with the order.

Credit moved to postpone argument on the motion until November because of counsel's personal time conflict. In support of this motion, Credit argued that the parties had abandoned the stipulated scheduling order. The court denied the motion and maintained the September 16 argument date, stating that counsel "had ample opportunity" to raise a scheduling issue earlier but did not do so.²⁴ Credit then filed a responding brief in which, for the first time, Credit said more time was needed to depose Stephens. The court denied the motion and proceeded to hear argument on September 16. The decision to grant or deny a continuance is discretionary. A court does not abuse its discretion in denying such a motion if the requesting party does not offer a good reason for

²⁴ Clerk's Papers (Stephens) at 169.

the delay in obtaining the desired evidence. Pitzer v. Union Bank, 141 Wn.2d 539, 556, 9 P.3d 805 (2000). The record here supports the trial court's exercise of discretion. Credit did not provide a good reason for failing to depose Stephens by the stipulated deadline.

RES JUDICATA

After Stephens filed suit against Omni, Omni counterclaimed that Stephens was liable to Omni for the amount Credit had attempted to collect: \$6,412. Four months before the summary judgment decision, Stephens confessed judgment in that amount in favor of Omni, and GEICO satisfied the judgment. Credit contends that the doctrine of res judicata precludes Stephens from continuing to litigate the present Consumer Protection Act case. However, Credit's appellate brief gives only passing treatment to this issue. Credit has particularly failed to explain how Omni's counterclaim against Stephens and the Consumer Protection Act claim Stephens brought against Credit are the same cause of action. See Knuth v. Beneficial Wash, Inc., 107 Wn. App. 727, 732, 31 P.3d 694 (2001) (analyzing four factors to determine whether two causes of action are the same for res judicata purposes). We decline to review Credit's res judicata contention. See Palmer v. Jensen, 81 Wn. App. 148, 153, 913 P.2d 413 (1996), remanded on other grounds, 132 Wn.2d 193, 937 P.2d 597 (1997) ("Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration.").

CR 12(b)(6) MOTION

Before Panag moved for summary judgment, Farmers moved to dismiss the action for failure to state a claim. Farmers assigns error to the trial court's decision denying this motion with respect to the Consumer Protection Act claim. We have decided that Panag presented sufficient evidence to meet each of the five elements of a Consumer Protection Act violation. It is implicit in our analysis that she stated a claim, and Farmers was not entitled to judgment on the pleadings. That order is affirmed.

DISCOVERY ORDER

Although the trial court granted defendants' motion to dismiss Panag's action for failure to offer proof of a cognizable injury, the court believed that counsel for Panag should be allowed to continue with discovery in order to find a replacement plaintiff to continue the putative class action. The court signed a summary judgment order dismissing Panag but simultaneously ordering Farmers and Credit to provide contact information for persons who received similar notices and to indicate whether such persons had paid any money. Credit and Farmers appealed that decision, arguing that there is no recognized legal basis for permitting discovery to continue once the case before the court has been entirely resolved. This court granted Credit's and Farmers' motion for a stay of the discovery order pending our disposition of the case. Because we conclude

the entry of summary judgment against Panag must be reversed, the discovery issue is now moot. The stay is lifted.

CONCLUSION

The order granting Stephens' motion for partial summary judgment against Credit is affirmed. The order granting Stephens' motion for partial summary judgment against Omni is reversed. The order granting the joint motion by Farmers and Credit for summary judgment against Panag is reversed.

WE CONCUR:

Schivall, ACS Becker, J.
Azid, J.

Consumer Transaction¹

- (1) *Aubrey's R.V. Center, Inc. v. Tandy Corp.*, 46 Wn. App. 595, 608, 731 P.2d 1124 (1987) (buyer of computer system brought action against seller seeking rescission of sales contract).
- (2) *Travis v. Washington Horse Breeders Ass'n, Inc.*, 111 Wn.2d 396, 405, 759 P.2d 418 (1988) (buyer of horse at auction brought action against sellers).
- (3) *Stevens v. Hyde Athletic Industries, Inc.*, 54 Wn. App. 366, 368-69, 773 P.2d 871 (1989) (buyer brought action against seller for product-related injury).
- (4) *Banks v. Nordstrom, Inc.*, 57 Wn. App. 251, 264, 787 P.2d 953 (1990) (patron brought action against store related to false arrest).
- (5) *Mason v. Mortgage America, Inc.*, 114 Wn.2d 842, 852, 792 P.2d 142 (1990) (buyers of mobile home brought action against seller and lender to recover for breach of contract).
- (6) *Clark v. Luepke*, 118 Wn.2d 577, 585, 826 P.2d 147 (1992) (customer brought action against mechanic alleging violations of Automotive Repair Act).
- (7) *Henery v. Robinson*, 67 Wn. App. 277, 289, 834 P.2d 1091 (1992) (buyers brought action against sellers and manufacturer related to damaged property).
- (8) *Eifler v. Shurgard Capital Management Corp.*, 71 Wn. App. 684, 696, 861 P.2d 1071 (1993) (tenant brought action against self-storage company related to loss of stolen property).
- (9) *Campbell v. Seattle Engine Rebuilders & Remanuf., Inc.*, 75 Wn. App. 89, 94, 876 P.2d 948 (1994) (customer brought action against automotive repair business).
- (10) *Cox v. Lewiston Grain Growers, Inc.*, 86 Wn. App. 357, 373, 936 P.2d 1191 (1997) (farmer brought action against seed company related to faulty seeds).
- (11) *Hiner v. Bridgestone/Firestone, Inc.*, 91 Wn. App. 722, 729, 959 P.2d 1158 (1998) (injured motorist brought action against tire manufacturer).
- (12) *Pickett v. Holland America Line-Westours, Inc.*, 101 Wn. App. 901, 914, 6 P.3d 63 (2000) (cruise ship passenger brought action against cruise line for misrepresented "port charges and taxes" assessed to customers purchasing cruise tickets).
- (13) *Demelash v. Ross Stores, Inc.*, 105 Wn. App. 508, 523, 20 P.3d 447 (2001) (patron brought action against store related to false arrest and conversion)

¹ This list includes all Washington cases involving private CPA claims reported since 1986. The list does not include cases where the courts did not reach or substantively analyze the CPA claim.

- (14) *Ethridge v. Hwang*, 105 Wn. App. 447, 458, 20 P.3d 958 (2001) (tenant of mobile home park brought action against landlord for violations of the Mobile Home Landlord Tenant Act).
- (15) *Guijosa v. Wal-Mart Stores, Inc.*, 144 Wn.2d 907, 917, 32 P.3d 250 (2001) (patron brought action against store related to false arrest and detention).
- (16) *Judd v. American Tel. and Tel. Co.*, 116 Wn. App. 761, 770, 66 P.3d 1102 (2003) (phone call recipients brought action against telecommunications providers related to nondisclosure of rates to individual accepting collect calls).
- (17) *Holiday Resort Community Ass'n v. Echo Lake Associates, LLC*, 134 Wn. App. 210, 210, 135 P.3d 499 (2006) (tenant association brought action against owner of mobile home park related to rental agreement dispute).

Private Contractual Dispute

- (1) *Quimby v. Fine*, 45 Wn. App. 175, 180, 724 P.2d 403 (1986) (patient brought action against physician for injuries sustained during child birth).
- (2) *Villella v. Public Employees Mut. Ins. Co.*, 106 Wn.2d 806, 820, 725 P.2d 957 (1986) (insured brought action against insurer related to denial of coverage).
- (3) *Broten v. May*, 49 Wn. App. 564, 570, 744 P.2d 1085 (1987) (real estate agent brought action against client for recovery of commission share on client's subsequent purchase).
- (4) *Cuevas v. Montoya*, 48 Wn. App. 871, 877, 740 P.2d 858 (1987) (clients brought action against attorney related to excessive fees).
- (5) *Escalante v. Sentry Ins.*, 49 Wn. App. 375, 386, 743 P.2d 832 (1987) (estate of deceased passenger covered under driver's policy brought action against insurer for denial of coverage).
- (6) *Nordstrom, Inc. v. Tampourlos*, 107 Wn.2d 735, 739, 733 P.2d 208 (1987) (beauty salon licensor brought action against licensee for trade name infringement and unfair competition).
- (7) *Evergreen Intern. Inc. v. American Cas. Co.*, 52 Wn. App. 548, 553, 761 P.2d 964 (1988) (insured brought action against insurer for improperly delayed claim payment).
- (8) *Jaramillo v. Morris*, 50 Wn. App. 822, 826, 750 P.2d 1301 (1988) (patient brought action against hospital for injuries sustained during treatment).

- (9) *Pacific Northwest Life Ins. Co. v. Turnbull*, 51 Wn. App. 692, 702, 754 P.2d 1262 (1988) (purchasers brought action against vendors and real estate broker related to fraudulent concealment and misrepresentations).
- (10) *Robinson v. McReynolds*, 52 Wn. App. 635, 637, 762 P.2d 1166 (1988) (purchasers brought action against real estate agency for misrepresentations)
- (11) *Burnet v. Spokane Ambulance*, 54 Wn. App. 162, 166, 772 P.2d 1027 (1989) (patient's parents brought action against hospital and physician for injuries sustained during treatment).
- (12) *Nguyen v. Glendale Const. Co., Inc.*, 56 Wn. App. 196, 202, 782 P.2d 1110 (1989) (insured brought action against insurer related to denial of coverage).
- (13) *Saunders v. Lloyd's of London*, 113 Wn.2d 330, 343, 779 P.2d 249 (1989) (insured brought action against insurer for recovery under policy).
- (14) *Demopolis v. Galvin*, 57 Wn. App. 47, 54, 786 P.2d 804 (1990) (subsequent purchaser of encumbered property brought action against lenders related to foreclosure).
- (15) *Howell v. Spokane & Inland Empire Blood Bank*, 114 Wn.2d 42, 57, 785 P.2d 815 (1990) (patient brought action against hospital and blood bank related to blood transfusion).
- (16) *Industrial Indem. Co. v. Kallevig*, 114 Wn.2d 907, 920, 792 P.2d 520 (1990) (insured brought action against insurer related to denial of coverage).
- (17) *Ins. Co. of Pennsylvania v. Highlands Ins. Co.*, 59 Wn. App. 782, 786, 801 P.2d 284 (1990) (insurer brought action against co-insurer related to refusal to share defense costs of co-insured).
- (18) *Schmidt v. Cornerstone Inv., Inc.*, 115 Wn.2d 148, 166, 795 P.2d 1143 (1990) (investors brought action against corporation and its for misrepresentation and fraud).
- (19) *Potter v. Wilbur-Ellis Co.*, 62 Wn. App. 318, 326, 814 P.2d 670 (1991) (pesticide applicators brought action against pesticide manufacturer related to sustained injuries).
- (20) *Scott v. Petett*, 63 Wn. App. 50, 62, 816 P.2d 1229 (1991) (purchaser brought action against vendor and real estate broker for enforcement of promissory note and foreclosure).
- (21) *Starczewski v. Unigard Ins. Group*, 61 Wn. App. 267, 272, 810 P.2d 58 (1991) (insured brought action against insurer related to denial of coverage).
- (22) *Eriks v. Denver*, 118 Wn.2d 451, 463, 824 P.2d 1207 (1992) (clients brought action against attorney for negligent representation).

- (23) *Nelson v. National Fund Raising Consultants, Inc.*, 120 Wn.2d 382, 391, 842 P.2d 473 (1992) (investors brought action against their consultants for payments in violation of Franchise Investment Protection Act).
- (24) *Quinn v. Connelly*, 63 Wn. App. 733, 742, 821 P.2d 1256 (1992) (client brought action against attorney for malpractice).
- (25) *Sign-O-Lite Signs, Inc. v. DeLaurenti Florists, Inc.*, 64 Wn. App. 553, 561, 825 P.2d 714 (1992) (customer brought counter action against sign company related to contract and fraud).
- (26) *Strother v. Capitol Bankers Life Ins. Co.*, 68 Wn. App. 224, 241, 842 P.2d 504 (1992) (beneficiary brought action against replacement insurer for failure to provide notice precluding denial of coverage).
- (27) *Thomas v. Wilfac, Inc.*, 65 Wn. App. 255, 265, 828 P.2d 597 (1992) (patient brought action against physician and emergency medical center for injuries sustained during treatment).
- (28) *Washington State Physicians Ins. Exchange & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 313, 858 P.2d 1054 (1993) (prescribing physician brought cross action against drug manufacturer related to prescribed drug).
- (29) *Estate of Hall v. HAPO Fed. Credit Union*, 73 Wn. App. 359, 365, 869 P.2d 116 (1994) (estate of credit union member brought action against credit union related to denial of coverage).
- (30) *Roger Crane & Assoc., Inc. v. Felice*, 74 Wn. App. 769, 780, 875 P.2d 705 (1994) (real estate broker and agency brought action against another real estate broker for failure to pay portion of commission under the agreement).
- (31) *Seattle Endeavors, Inc. v. Mastro*, 123 Wn.2d 339, 349, 868 P.2d 120 (1994) (dismissing CPA claim by owner of apartment complex against owner of another complex based on trade name infringement).
- (32) *Bruce v. Northwest Metal Products Co.*, 79 Wn. App. 505, 517, 903 P.2d 506 (1995) (employee brought action against former employer for discrimination and injury).
- (33) *Urban v. Mid-Century Ins.*, 79 Wn. App. 798, 805, 905 P.2d 404 (1995) (insured's passenger brought action against insurer to set aside settlement in order to make claim under insured's "uninsured motorist" policy).
- (34) *Dombrosky v. Farmers Ins. Co.*, 84 Wn. App. 245, 258, 928 P.2d 1127 (1996) (insured brought action against insurer related to denial of coverage).
- (35) *Anderson v. Valley Quality Homes, Inc.*, 84 Wn. App. 511, 513, 928 P.2d 1143 (1997) (mobile home owners brought action against installer for failure to follow minimum installation standards).

- (36) *Edmonds v. John L. Scott Real Estate, Inc.*, 87 Wn. App. 834, 845, 942 P.2d 1072 (1997) (purchaser brought action against real estate broker in connection with transaction).
- (37) *Goodyear Tire & Rubber Co. v. Whiteman Tire, Inc.*, 86 Wn. App. 732, 743, 935 P.2d 628 (1997) (dealer brought action against tire manufacturer related to contract and sales dispute).
- (38) *Sing v. John L. Scott, Inc.*, 134 Wn.2d 24, 30, 948 P.2d 816 (1997) (prospective purchaser brought action against his real estate agency).
- (39) *Griffith v. Centex Real Estate Corp.*, 93 Wn. App. 202, 214, 969 P.2d 486 (1998) (home purchasers brought action against builder-vendor related to breach of warranty and negligent misrepresentation).
- (40) *State Farm Fire and Cas. Co. v. Huynh*, 92 Wn. App. 454, 468, 962 P.2d 854 (1998) (insurer brought action against chiropractor related to fraudulent report filed in insurance claim).
- (41) *Barry v. USAA*, 98 Wn. App. 199, 206, 989 P.2d 1172 (1999) (insured brought action against insurer for partial denial of coverage).
- (42) *First State Ins. Co. v. Kemper Nat. Ins. Co.*, 94 Wn. App. 602, 609, 971 P.2d 953 (1999) (excess liability insurer brought action against primary liability insurer for bad faith failure to settle).
- (43) *Pain Diagnostics and Rehabilitation Assoc., P.S. v. Brockman*, 97 Wn. App. 691, 698, 988 P.2d 972 (1999) (healthcare provider brought action against insurer related to denial of coverage).
- (44) *Seattle Pump Co., Inc. v. Traders and General Ins. Co.*, 93 Wn. App. 743, 752-53, 970 P.2d 361 (1999) (insured brought action against insurer related to denial of coverage).
- (45) *Van Noy v. State Farm Mut. Auto. Ins. Co.*, 98 Wn. App. 487, 496, 983 P.2d 1129 (1999) (insured brought action against insurer related to denial of coverage).
- (46) *Anderson v. State Farm Mut. Ins. Co.*, 101 Wn. App. 323, 330, 2 P.3d 1029 (2000) (insured brought action against insurer related to denial of coverage).
- (47) *Dwyer v. J.I. Kislak Mortg. Corp.*, 103 Wn. App. 542, 546, 13 P.3d 240 (2000) (mortgagors brought action against original mortgagee related to service fees).
- (48) *Hayden v. Mutual of Enumclaw Ins. Co.*, 141 Wn.2d 55, 62, 1 P.3d 1167 (2000) (assignee of insured brought action against insurer related to denial of coverage).
- (49) *American Manuf. Mut. Ins. Co. v. Osborn*, 104 Wn. App. 686, 697, 17 P.3d 1229 (2001) (insured brought action against insurer related to denial of coverage).

- (50) *Besel v. Viking Ins. Co.*, 105 Wn. App. 463, 482, 21 P.3d 293 (2001) (insured brought action against insurer related to denial of coverage).
- (51) *Bishop v. Jefferson Title Co., Inc.*, 107 Wn. App. 833, 850, 28 P.3d 802 (2001) (property owners brought action against title insurance company in connection with real estate transactions).
- (52) *Griffin v. Allstate Ins. Co.*, 108 Wn. App. 133, 148, 29 P.3d 777 (2001) (insured brought action against insurer related to bad-faith failure to defend).
- (53) *Koch v. Mutual of Enumclaw Ins. Co.*, 108 Wn. App. 500, 509-10, 31 P.3d 698 (2001) (insured brought action against physician related to denial of coverage based on his report).
- (54) *Robinson v. Avis Rent-A-Car System, Inc.*, 106 Wn. App. 104, 114, 22 P.3d 818 (2001) (lessees of rental cars brought action against rental companies for unfair and deceptive billing practices).
- (55) *Svendsen v. Stock*, 143 Wn.2d 546, 553, 23 P.3d 455 (2001) (property purchaser brought action against seller's broker for fraudulent concealment).
- (56) *Cotton v. Kronenberg*, 111 Wn. App. 258, 274, 44 P.3d 878 (2002) (former client brought action against attorney in connection with fee agreement).
- (57) *Micro Enhancement Int., Inc. v. Coopers & Lybrand, LLP*, 110 Wn. App. 412, 438, 40 P.3d 1206, 1220 (2002) (client brought action against auditors related to negligence and breach of contract).
- (58) *Overton v. Consolidated Ins. Co.*, 145 Wn.2d 417, 434, 38 P.3d 322 (2002) (insured brought action against insurers related to denial of coverage).
- (59) *Restaurant Dev., Inc. v. Cananwill, Inc.*, 114 Wn. App. 194, 204, 55 P.3d 680 (2002) (insured brought action against its insurance company related to excessive service charges).
- (60) *Sorrel v. Eagle Healthcare, Inc.*, 110 Wn. App. 290, 298, 38 P.3d 1024 (2002) (widower of nursing home resident brought action against nursing home related to failure to refund contract payments).
- (61) *James E. Torina Fine Homes, Inc. v. Mutual of Enumclaw Ins. Co.*, 118 Wn. App. 12, 21, 74 P.3d 648 (2003) (insured brought action against insurer for failure to investigate).
- (62) *Johnson v. Cash Store*, 116 Wn. App. 833, 846-47, 68 P.3d 1099 (2003) (creditor brought action against debtor related to unconscionable credit agreement).
- (63) *Casper v. Esteb Enterprises, Inc.*, 119 Wn. App. 759, 772, 82 P.3d 1223 (2004) (purchaser brought action against builder for breach of contract).

- (64) *Int. Ultimate, Inc. v. St. Paul Fire & Marine Ins. Co.*, 122 Wn. App. 736, 756, 87 P.3d 774 (2004) (insured brought action against insurers related to denial of coverage).
- (65) *Jeckle v. Crotty*, 120 Wn. App. 374, 383, 85 P.3d 931 (2004) (dismissing physician's CPA claim against adversarial attorneys who obtained his confidential patient list and solicited his patients to join a malpractice action).
- (66) *Mayer v. Sto Ind., Inc.*, 123 Wn. App. 443, 456, 98 P.3d 116 (2004) (homeowners brought action against manufacturer related to damaged property).
- (67) *Sheldon v. American States Preferred Ins. Co.*, 123 Wn. App. 12, 17, 95 P.3d 391 (2004) (insured brought action against insurer related to premium fee recovery).
- (68) *Wright v. Safeco Ins. Co.*, 124 Wn. App. 263, 280, 109 P.3d 1 (2004) (insured brought action against insurer related to breached contract).
- (69) *Burbo v. Harley C. Douglass, Inc.*, 125 Wn. App. 684, 699, 106 P.3d 258 (2005) (purchaser brought action against seller-builder related to construction defects).
- (70) *Cashmere Valley Bank v. Brender*, 128 Wn. App. 497, 509, 116 P.3d 421 (2005) (debtor brought counter action against creditor related to collection on promissory note).
- (71) *Fidelity Mort. Corp. v. Seattle Times Co.*, 131 Wn. App. 462, 470, 128 P.3d 621 (2005) (advertising mortgage company brought action against listing newspaper related to inaccurate mortgage rates cited in paper).
- (72) *Rizzuti v. Basin Travel Service, Inc.*, 125 Wn. App. 602, 621-22, 105 P.3d 1012 (2005) (heirs of insured brought action against insurer related to denial of coverage).
- (73) *Shields v. Morgan Financial, Inc.*, 130 Wn. App. 750, 756, 125 P.3d 164 (2005) (borrower brought action against real estate broker and lender for failure to provide a good faith estimate).
- (74) *Sloan v. Thompson*, 128 Wn. App. 776, 792, 115 P.3d 1009 (2005) (purchaser brought action against vendor-builder related to fraudulent concealment and construction defects).
- (75) *Banuelos v. TSA Washington, Inc.*, 134 Wn. App. 607, 614-15, 141 P.3d 652 (2006) (buyers brought action against car dealer for violation of "bushing" statute).
- (76) *Burns v. McClinton*, 135 Wn. App. 285, 302, 143 P.3d 630 (2006) (client brought action against accountant for embezzlement).
- (77) *Mayer v. Sto Industries, Inc.*, 156 Wn.2d 677, 693, 132 P.3d 115 (2006) (homeowners brought action against manufacturer related to damaged property).

- (78) *Westview Investments, Ltd. v. U.S. Bank Nat. Ass'n*, 133 Wn. App. 835, 854, 138 P.3d 638 (2006) (property owners brought action against contractor and bank related to disputed payments under contract).
- (79) *American Best Food, Inc. v. Alea London, Ltd.*, 158 P.3d 119, 129 (2007) (insured brought action against insurer for bad-faith failure to defend lawsuit).

Uninsured Motorists

2006 Edition



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Chapter 1

Executive Summary

People driving without insurance create potential problems for other drivers, insurers, and regulators. Insured drivers must bear additional risks and added costs because of the need for uninsured motorists (UM) coverage.

In addition to paying for insurance that covers their own actions, insured drivers also pay a portion of the costs for others who drive without insurance, despite laws in most states requiring auto liability insurance. Costs associated with UM claims can be substantial. In 2002, the average UM claim included \$5,861 in economic losses due to auto injuries and an average total UM injury payment of \$8,294, not including payments for property damage.¹

In addition to the direct cost of UM claims, auto insurance companies must comply with regulations and requirements related to the problem of uninsured motorists, as well as underwrite UM coverage and process UM claims. State legislators and regulators have attempted to address the issue of uninsured motorists by enacting various laws and regulations. Resources must be spent enforcing those regulations. Ultimately, uninsured motorists create a public policy problem regarding the extent of potential harm caused to others on roadways and the risks that others must face and account for because of them.

Forty-six states and the District of Columbia have compulsory insurance laws that require motorists to maintain auto injury liability insurance.²

Even in states where auto liability insurance is not compulsory, financial responsibility laws impose insurance requirements on motorists that have demonstrated a lack of financial responsibility for past auto accidents.

Despite laws that require auto insurance, however, many drivers choose to operate their vehicles without such coverage.

To provide a clearer picture of the magnitude of the uninsured motorists problem, this study estimated the percentage of uninsured drivers across the United States, including differences by state, from 1999 to 2004, using auto injury claim frequency data collected from eleven insurers representing 58 percent of the private passenger automobile insurance market. In addition, percentages of uninsured drivers were estimated for a selected number of cities and corresponding suburbs within states from 2001 through 2004.

¹ Insurance Research Council, *Auto Injury Insurance Claims: Countrywide Patterns in Treatment, Cost, and Compensation* (Malvern, Pa.: Insurance Research Council, 2003), p. 72.

² American Insurance Association, *Automobile Insurance Laws* (Washington, D.C.: American Insurance Association, 2006), Chart F.

The size of the uninsured motorists population was estimated by comparing the injury portion of the UM coverage with bodily injury liability (BI) coverage. If an insured has injuries from an auto accident caused by an at-fault motorist, he or she files a BI liability claim against the at-fault driver and seeks compensation for injuries from the accident. However, if the at-fault driver does not have liability insurance or the injured person is a victim of a hit-and-run driver, then the injured party relies on his or her own UM coverage to pay for the injury costs and property damage incurred. Claim frequencies measure the number of insurance claims per number of insured cars, often expressed as the number of claims per hundred insured vehicles. A ratio of the UM claim frequency to the BI claim frequency produces an estimate of the percentage chance that if someone is injured in an auto accident, then the at-fault driver was uninsured. This UM to BI claim frequency ratio yields an estimate for the percentage of uninsured drivers. The UM to BI ratio is one of many tools used to analyze the problem of uninsured motorists.

Comparing only UM claim frequencies reveals differences among states. However, claim frequencies are affected not only by the number of uninsured or hit-and-run vehicles, but also by overall accident rates in a state or area. In high-hazard areas, both insured and uninsured vehicles are involved in more accidents and therefore would have higher claim frequencies than drivers in lower-hazard areas. In addition, claim frequencies in different states could be affected by the impact of tort liability thresholds associated with no-fault laws, differences in the general propensity to make claims, or other factors, such as speed limit changes, that may affect overall safety. The ratio of UM to BI frequencies overcomes these potential differences among the states by generating a measure of relative frequency, allowing comparisons across states or areas.

The following provides an example of the calculations involved. Suppose that in a group of 10,000 vehicle owners, 1,000 (10 percent) do not have auto liability insurance. If accidents involving injuries occurred at a frequency of 5 percent, then 500 auto accidents with an injury would occur, of which fifty uninsured drivers (10 percent \times 500) would be at fault for an auto injury in a year. Five of the fifty accidents (10 percent) would involve another uninsured motorist, while forty-five of the accidents would involve insured motorists as the injured parties. As a result, these forty-five injured parties would make UM claims with their own insurers, generating a claim frequency of 0.005 (45 UM claims for 9,000 insured vehicles). Meanwhile, there would be 450 BI claims for 9,000 insured vehicles, producing a BI claim frequency of 0.05. The ratio of UM to BI claim frequencies would be 0.10, or 10 percent ($0.005/0.05$). The ratio of UM to BI claim frequencies produces a measure of the probability that an injury to an insured car occupant will have been the fault of an uninsured driver.

Data used for calculating claim frequencies were gathered for each state from participating auto insurers, covering the years 1999 to 2004. In six states (California, Illinois, New Jersey, New York, Pennsylvania, and Texas), frequency data were also gathered based on major cities, their corresponding suburbs, and the rest of the state to examine the extent to which the problem of uninsured motorists varies by location. Chapter 4 contains further details and limitations of the data used for this analysis.

Major Findings

- Across the United States, when someone was injured in an auto accident, the chances were about one in seven that the at-fault driver was uninsured. From 1999 to 2003, the countrywide ratio of UM to BI claim frequencies increased from 12.7 percent to 14.9 percent before measuring 14.6 percent in 2004 (Figure 1-1), indicating a generally increasing trend in the percentage of motorists driving without liability insurance.
- The percentage of uninsured motorists varied significantly by state. In 2004, the UM to BI claim frequency ratio was highest in Mississippi (26.5 percent) and lowest in Maine (4.2 percent). Figure 1-2 maps ranges of the estimated percentage of uninsured drivers in each state and shows six states plus the District of Columbia with UM to BI ratios above 20 percent.
- Reflecting the national trend, the UM to BI ratio indicated that some states had steady increases in the percentage of uninsured motorists over time. For example, California's UM to BI ratio increased from 19 percent in 1999 to 25 percent in 2004. Similarly, Arizona's UM to BI ratio increased from 17 percent to 22 percent over the same six years.

Figure 1-1

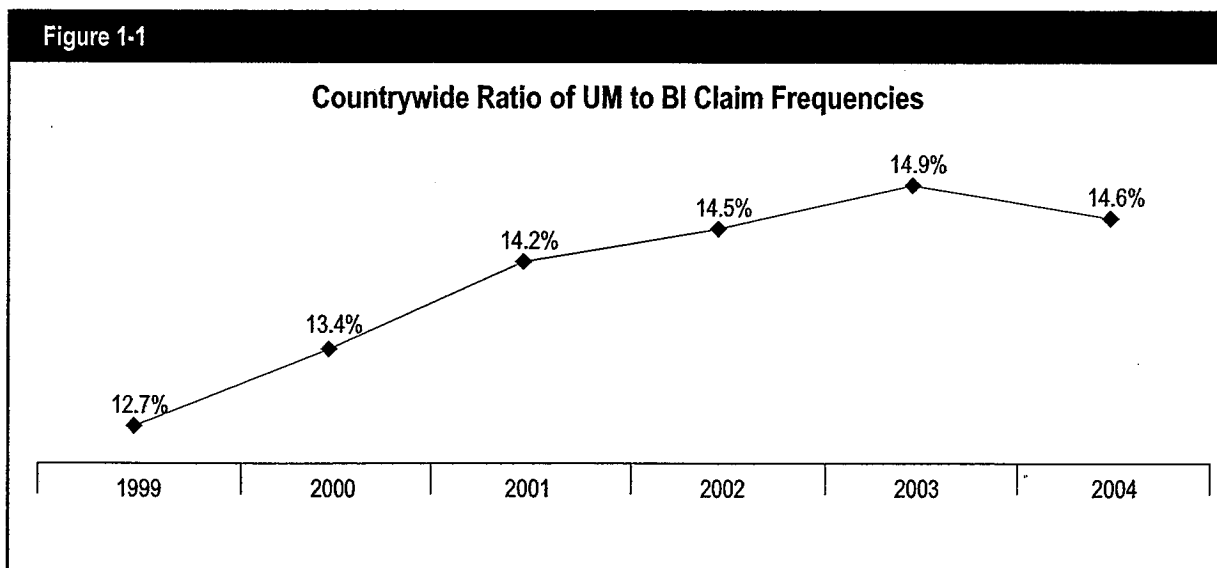
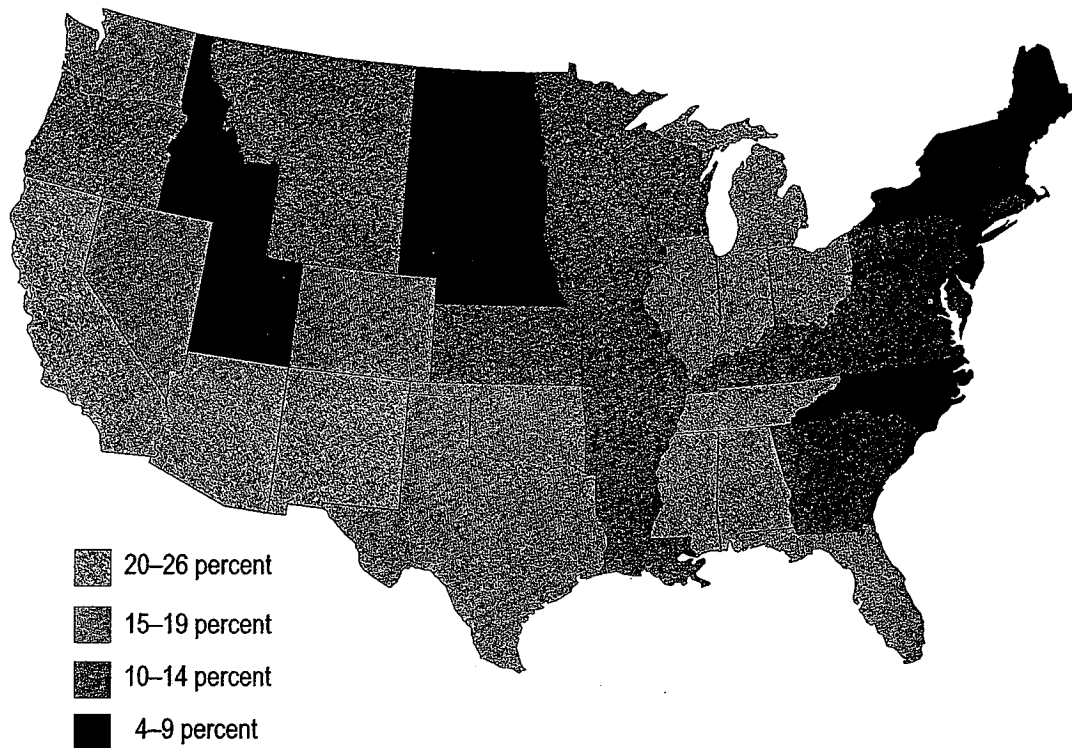


Figure 1-2

Variation by State of Uninsured Motorists Percentage
Based on 2004 UM to BI Frequency Ratios



- In a few states, the UM to BI ratio indicated a decline in the percentage of uninsured motorists. In both New Jersey and South Carolina, the percentage of uninsured motorists declined after auto insurance regulations were enacted that allowed greater market competition and innovation. In 2003, New Jersey introduced new insurance regulations and the UM to BI frequency ratio declined to 9 percent in 2004 from a consistent level of 13 percent in the previous five years. Prior to auto insurance reforms in 1998, South Carolina consistently recorded UM to BI ratios above 22 percent. After the reforms, South Carolina's UM to BI ratio dropped dramatically to between 8 and 10 percent from 1999 to 2004.
- In general, measures of uninsured motorists were higher in large cities than in other locations within their respective states. From 2001 to 2004, the average UM to BI claim frequency ratio in Philadelphia (32 percent) was nearly three times higher than in other locations measured in Pennsylvania. Similarly, in Illinois, the average UM to BI ratio in Chicago was almost 25 percent, more than twice the ratio measured in other parts of the state.

Chapter 2

Uninsured Motorists Rates by State

When an accident occurs and the at-fault driver does not have liability insurance, the injured party must rely on his or her own uninsured motorists (UM) coverage to pay for the damages and injuries sustained. In this analysis, the UM claim frequency focuses specifically on the injury portion of the coverage. The UM claim frequency (typically represented as the number of UM claims per 100 insured vehicles) and the ratio of UM to BI claim frequencies provide the comparisons used to estimate the percentage of uninsured motorists by state and across the country.

National Trends

The ratio of UM claim frequencies to BI claim frequencies produces a reasonable proxy for the relative size of the uninsured driver population. This UM to BI frequency ratio indicates the proportion of accidents involving injuries caused by uninsured or hit-and-run drivers. The countrywide UM to BI frequency ratio showed the percentage of auto injury claims from accidents caused by uninsured motorists increasing from 1999 to 2004 relative to claims with insured drivers at fault. The UM to BI claim frequency steadily increased from 12.7 percent in 1999 to a peak of 14.9 percent in 2003, before measuring 14.6 percent in 2004 (Figure 2-1). Using this ratio as an approximation of the percentage of uninsured motorists in the United States, a greater percentage of motorists across the country were driving uninsured in 2004 than in 1999.

Underlying the countrywide UM to BI claim frequency ratio, useful information can be observed by examining the UM and BI claim frequencies separately. From 1999 to 2004, the UM claim frequency hovered between 0.164 and 0.175, or slightly less than two claims per 1,000 insured vehicles. During this same six-year period, the BI claim frequency steadily dropped a total of 12 percent, from 1.285 in 1999 to 1.129 in 2004, or from almost thirteen BI claims per 1,000 insured vehicles in 1999 to about eleven BI claims per 1,000 insured vehicles in 2004. As a result, the percentage of injury claims due to uninsured drivers increased countrywide relative to injury claims from accidents due to insured drivers.

Figure 2-1

Countrywide UM and BI Claim Frequencies

Year	UM Claim Frequency	BI Claim Frequency	Ratio of UM to BI Claim Frequencies
1999	0.164	1.285	12.7%
2000	0.170	1.264	13.4
2001	0.175	1.229	14.2
2002	0.173	1.191	14.5
2003	0.172	1.153	14.9
2004	0.165	1.129	14.6

Frequencies are based on number of claims per 100 insured vehicles.

Variation Among States

The percentage of uninsured drivers, as measured by the ratio of UM to BI claim frequencies, varied significantly by state. In 2004, seventeen states and the District of Columbia had UM to BI frequency ratios above the national average (Figure 2-2). Thirty-three states had frequency ratios below the national average. Mississippi had a UM to BI frequency ratio of 26.5 percent in 2004, the highest of any state. Meanwhile, Maine had a ratio of 4.2 percent, the lowest of any state. Mississippi's ratio was more than six times higher than that of Maine.

Figure 2-2

State UM and BI Claim Frequencies and UM to BI Ratios 2004

State	UM Claim Frequency	BI Claim Frequency	UM to BI Ratio (Percentage)	Rank by 2004 UM to BI Ratio
Mississippi	0.265	0.999	26.5%	1
Alabama	0.219	0.884	24.8	2
California	0.320	1.291	24.8	3
New Mexico	0.261	1.072	24.3	4
Arizona	0.329	1.491	22.0	5
Tennessee	0.187	0.883	21.2	6
District of Columbia	0.328	1.599	20.5	7
Florida	0.233	1.200	19.4	8
Washington	0.264	1.431	18.5	9
Nevada	0.296	1.693	17.5	10

State	UM Claim Frequency	BI Claim Frequency	UM to BI Ratio (Percentage)	Rank by 2004 UM to BI Ratio
Michigan	0.055	0.312	17.5%	11
Texas	0.235	1.427	16.5	12
Illinois	0.168	1.043	16.1	13
Indiana	0.133	0.854	15.5	14
Ohio	0.154	1.002	15.4	15
Alaska	0.176	1.145	15.3	16
Colorado	0.141	0.940	15.0	17
Oklahoma	0.183	1.235	14.8	18
Rhode Island	0.300	2.090	14.4	19
Wisconsin	0.114	0.801	14.2	20
Arkansas	0.163	1.179	13.9	21
Hawaii	0.062	0.461	13.5	22
Kansas	0.062	0.487	12.7	23
Montana	0.091	0.731	12.4	24
Iowa	0.083	0.669	12.4	25
Oregon	0.163	1.326	12.3	26
Missouri	0.136	1.117	12.2	27
Maryland	0.192	1.577	12.2	28
Connecticut	0.195	1.604	12.2	29
Kentucky	0.104	0.883	11.8	30
Delaware	0.142	1.215	11.7	31
Wyoming	0.059	0.556	10.7	32
Minnesota	0.044	0.424	10.4	33
Louisiana	0.216	2.118	10.2	34
Virginia	0.109	1.087	10.0	35
West Virginia	0.105	1.080	9.7	36
Pennsylvania	0.077	0.796	9.7	37
South Carolina	0.136	1.415	9.6	38
Georgia	0.098	1.026	9.6	39
New Jersey	0.111	1.187	9.4	40
Utah	0.119	1.276	9.3	41
Idaho	0.085	0.967	8.8	42
South Dakota	0.049	0.549	8.8	43
New Hampshire	0.062	0.706	8.8	44
North Dakota	0.020	0.230	8.7	45
North Carolina	0.092	1.197	7.7	46
Nebraska	0.065	0.871	7.5	47
New York	0.076	1.146	6.6	48
Massachusetts	0.080	1.336	6.0	49
Vermont	0.043	0.750	5.7	50
Maine	0.036	0.864	4.2	51
USA	0.165	1.129	14.6	

Frequencies are based on number of claims per 100 insured vehicles.

In 2004, six states (Mississippi, Alabama, California, New Mexico, Arizona, and Tennessee) and the District of Columbia reported UM to BI claim frequency ratios higher than 20 percent. In those states, if an insured driver was injured in an auto accident, there was more than a one-in-five chance that the at-fault driver was uninsured. Meanwhile, six states produced UM to BI claim frequency ratios below 8 percent. Maine had the lowest, followed by Vermont, Massachusetts, New York, Nebraska, and North Carolina.

The ratio of UM to BI claim frequencies establishes a measure for comparison across states that is not affected by the level of hazard or the legal environment in particular areas. However, ratios can be similar for states with both high UM and BI claim frequencies and states with both low UM and BI claim frequencies. Figure 2-3 illustrates the relationship between the UM and BI claim frequencies for each state and the corresponding UM to BI ratio.

Figure 2-3

UM and BI Claim Frequency Distribution 2004				
UM Claim Frequency	High > 0.20	AL, MS	CA, FL, NM	AZ, DC, LA, NV, RI, TX, WA
	Medium 0.10 to 0.20	CO, IN, TN, WI	AK, AR, DE, IL, KY, MO, NJ, OH, OK, UT, VA, WV	CT, MD, OR, SC
	Low < 0.10	HI, IA, ID, KS, ME, MI, MN, MT, ND, NE, NH, PA, SD, VT, WY	GA, NC, NY	MA
		Low < 1.00	Medium 1.00 to 1.30	High > 1.30
BI Claim Frequency				
States with 10 highest UM to BI claim frequency ratios are in bold.				
Frequencies are based on number of claims per 100 insured vehicles.				

The states were ranked based on UM claim frequency. Twelve states had UM claim frequencies higher than 0.200 in 2004, led by Arizona at 0.329, or more than three UM claims per 1,000 vehicles with uninsured motorists coverage. Twenty states registered UM claim frequencies between 0.100 and 0.200. Nineteen states recorded UM claim frequencies below 0.100, or less than one UM claim per 1,000 insured vehicles. In 2004, North Dakota had the lowest UM claim frequency (0.020).

The states were also ranked based on BI claim frequency. Twelve states registered BI claim frequencies above 1.300, or more than thirteen BI claims per 1,000 insured vehicles in 2004. Louisiana had the highest BI claim frequency at 2.118. Eighteen states had BI claim frequencies between 1.000 and 1.300. Twenty-one states reported BI claim frequencies below 1.000. As with the ranking of UM claim frequencies, North Dakota had the lowest BI claim frequency in 2004, measuring 0.230, or slightly more than two BI claims per 1,000 insured cars.

As revealed in Figure 2-3, most states with high UM claim frequencies also had high BI claim frequencies. Similarly, states with low UM claim frequencies were likely to have low BI claim frequencies. Nine of the ten states with the highest UM to BI claim frequency ratios in 2004 had UM claim frequencies above 0.200. Tennessee registered a UM claim frequency in the middle range relative to the other states but had a relatively low BI claim frequency, thereby producing the sixth highest ratio of UM to BI claim frequencies. Mississippi and Alabama had the two highest UM to BI ratios among the states in 2004, resulting from the combination of relatively high UM claim frequencies and relatively low BI claim frequencies.

Two states, Louisiana and Rhode Island, produced relatively high UM claim frequencies, yet both had ratios of UM to BI frequencies below the national average. In both cases, the states' BI claim frequencies were also high relative to those of other states, effectively depressing the resulting UM to BI ratio. Louisiana and Rhode Island were the only two states with BI claim frequencies above 2.0, or more than twenty BI claims per 1,000 insured vehicles. The UM to BI claim frequency ratio for Rhode Island was 14.4 percent, just below the national average of 14.6 percent in 2004. Louisiana's UM to BI ratio was 10.2 percent, the thirty-fourth highest among the states. While Louisiana ranked in the top twelve highest states in UM claim frequency and first in BI claim frequency, the state's UM to BI frequency ratio was similar to Minnesota's ratio of 10.4 percent, even though Minnesota had the fourth lowest UM claim frequency and third lowest BI claim frequency.

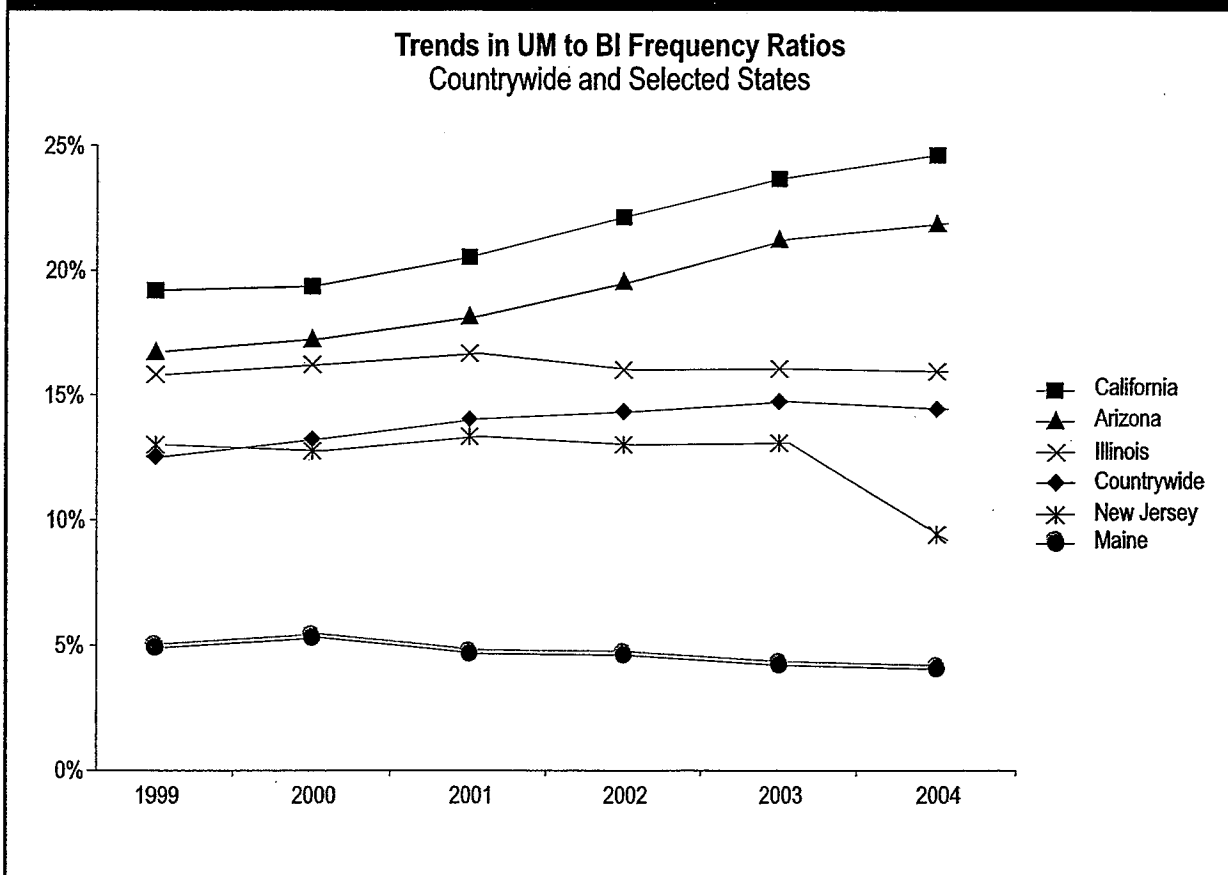
State UM to BI Ratio Trends Across Years

Although the overall countrywide UM to BI claim frequency ratio increased from 12.7 percent in 1999 to 14.6 percent in 2004, various states showed different trends. A dozen states showed generally increasing UM to BI ratios during this six-year period, whereas a few states exhibited decreasing trends. The remaining states' ratios stayed about approximately the same or fluctuated up or down slightly from year to year. Even among states with UM to BI ratios that stayed approximately level from 1999 to 2004, some were lower than the national average, while others were much higher than the

national average each year. Appendix I lists all states alphabetically with their UM claim frequency, BI claim frequency, UM to BI frequency ratios, and corresponding ranks among the states according to the UM to BI ratio from 1999 through 2004.

In some states, the percentage of uninsured motorists indicated by the UM to BI frequency ratio increased at a faster rate than the overall national average from 1999 to 2004. In California, the UM to BI ratio increased from 19 percent in 1999 to 25 percent in 2004, indicating a significant increase in the percentage of uninsured motorists (Figure 2-4). Similarly, in Arizona, the UM to BI ratio increased from 17 percent in 1999 to 22 percent in 2004. In Indiana, the UM to BI ratio was 11 percent in 1999, which was below the national average. By 2004, the UM to BI ratio increased to 16 percent in Indiana, which was above the national average.

Figure 2-4



In New Jersey, the UM to BI ratio was steady at 13 percent from 1999 to 2003, before falling to 9 percent in 2004. This drop corresponded with changes to New Jersey's auto insurance market regulations enacted in June 2003 that were designed to increase competition and availability of auto insurance.¹ Delaware and Hawaii also showed small decreases in their UM to BI frequency ratios, dropping from 14 percent to 12 percent and 16 percent to 13 percent, respectively, from 1999 to 2004.

Measures of the percentage of uninsured motorists in South Carolina also exhibited significant drops in uninsured drivers over time following changes in auto insurance regulations. From 1992 through 1997, South Carolina was consistently among the ten states with the highest UM to BI claim frequency ratios. South Carolina's UM to BI ratio steadily increased from 22.5 percent in 1992 before peaking at 30.6 percent in 1997.² In 1998, South Carolina introduced changes to the state's auto insurance regulations designed to allow for greater market competition and innovation by substantially deregulating rates.³ By 1999, South Carolina's UM to BI ratio fell to 8 percent and remained between 8 and 10 percent through 2004, well below the national average during those six years. After deregulation of South Carolina's auto insurance market, the percentage of uninsured motorists in the state decreased to approximately one-third of previously measured levels.

The UM to BI ratio also dropped significantly in Colorado from 1999 to 2004. However, from 1999 until the middle of 2003, Colorado's auto insurance regulations had a no-fault threshold that limited BI claims subject to a \$2,500 monetary threshold, while UM claims were not subject to a monetary threshold during those years. Therefore, Colorado's UM to BI claim frequency ratio was inflated from 1999 until 2003 because the thresholds were not the same for filing UM and BI claims. In all other states, both UM and BI claims were subject to the same thresholds, if any. In 2004, with no differences in claim filing thresholds, Colorado's UM to BI claim frequency ratio was 15 percent.

While the percentage of uninsured motorists increased in some states and decreased in others, some states' percentages remained at consistent levels from 1999 to 2004. Figure 2-4 shows Illinois and Maine had UM to BI ratios that remained consistent during that time. The UM to BI claim frequency ratio in Illinois stayed about 16 percent, ranging from 16.0 percent in 1999 to 16.8 percent in 2001 and back to 16.1 percent in 2004.

¹ New Jersey Department of Banking and Insurance, "New Jersey Consumers Are in the Driver's Seat," February 2005, www.njdobi.org/acrobat/2005autoreport.pdf (accessed April 2006).

² Insurance Research Council, *Uninsured Motorists, 2000 Edition* (Malvern, Pa.: Insurance Research Council, 2000), p. 20.

³ Robert Litan, "Deregulating Auto Insurance," The Brookings Institute, August 2001, www.brookings.edu/views/testimony/litan/20010801.htm (accessed April 2006).

While Illinois' UM to BI ratio did not fluctuate much, it was above the national average each year. Meanwhile, Maine's UM to BI claim frequency ratio stayed between 4 and 5 percent, consistently well below the national average in each of the six years. Ultimately, Figure 2-4 illustrates that while the UM to BI claim frequency increased nationally from 1999 to 2004, growth in the problem of uninsured motorists appeared to be greater in some states than in others.

State Claim Frequency Trends Across Years

As some states showed different trends in the UM to BI frequency ratios, examining the UM claim frequencies and BI claim frequencies separately also revealed different trends by state. In some states, the UM claim frequency increased from 1999 to 2004, while the BI claim frequency decreased during the same time period. California's UM claim frequency steadily increased a total of 10 percent from 0.290 in 1999 to 0.320 in 2004. Meanwhile, California's BI claim frequency decreased 14 percent from 1.501 in 1999 to 1.291 in 2004. Similarly, in Arizona, the UM claim frequency increased 15 percent from 1999 to 2004 while the BI claim frequency decreased 12 percent during the same time period. The resulting UM to BI ratio indicated an increasing trend of the percentage of injuries in accidents caused by uninsured motorists in these states.

In other states, both the UM claim frequency and BI claim frequency declined from 1999 to 2004. In Illinois, the UM and BI claim frequencies decreased 20 percent and 21 percent, respectively, from 1999 to 2004. As a result, the UM to BI ratio in Illinois remained relatively level at approximately 16 percent. Similarly, in Virginia, both the UM claim frequency and BI claim frequency declined by about the same percentage and the resulting UM to BI ratio was relatively unchanged. From 1999 to 2004, Virginia's UM claim frequency declined 18 percent, the state's BI claim frequency declined 17 percent, and the UM to BI ratio remained approximately 10 percent.

Effects of Insurance Laws

Various laws and regulations concerning auto insurance may affect the number of uninsured motorists in a state. As described earlier in this chapter, changes to regulations that increased market competition in New Jersey and South Carolina were associated with subsequent decreases in the percentage of uninsured motorists in those states. Other types of auto insurance regulations that affect UM claims in some states include no-fault laws and compulsory insurance versus financial responsibility laws.

States require different types of auto insurance coverage for injury victims. In a traditional tort system, injured claimants generally collect payments from the insurance company of the at-fault driver or, if the at-fault driver is

not insured, the claimant files a UM claim with his or her own insurer. In a no-fault system, the right to sue an at-fault driver is restricted and injured claimants are initially compensated by their own insurer, primarily through personal injury protection (PIP) coverage. In no-fault states, only people with injuries serious enough to meet certain criteria, or thresholds, are eligible for BI or UM claims. In 2004, twelve states offered no-fault insurance, including three (Kentucky, New Jersey, and Pennsylvania) that allowed consumers to choose between a no-fault and a tort system.⁴ Among these twelve states, ten had UM to BI claim frequency ratios below the national average of 14.6 percent. Two no-fault states, Florida (19.4 percent) and Michigan (17.5 percent), registered UM to BI ratios above the national average.

Forty-six states and the District of Columbia have compulsory auto liability laws that require a person to provide proof, which is usually in the form of auto insurance, of his or her ability to pay damages up to at least the state's minimum level in order to legally drive a vehicle. In the other four states, Florida, New Hampshire, Tennessee, and Wisconsin, financial responsibility laws require proof after an accident that drivers can pay injury liability damages of at least the minimum required amount. In Florida, compulsory laws apply to PIP coverage, but not to third-party BI liability coverage. In 2004, of the four states that did not have compulsory auto injury liability laws, the UM to BI ratios in Tennessee (21.2 percent) and Florida (19.4 percent) were significantly above the national average of 14.6 percent. The percentage of uninsured drivers based on the UM to BI ratio in Wisconsin was 14.2 percent in 2004, similar to the national average. New Hampshire's UM to BI ratio was 8.8 percent in 2004.

Penalties for Uninsured Motorists

State lawmakers have introduced various penalties for uninsured motorists, including fines, suspended or revoked licenses or vehicle registrations, impounded vehicles, and jail. The amounts of fines for driving uninsured vary from less than \$100 to over \$1,000 in a few states. In many states, specific penalties for uninsured motorists are given in the law, but the penalties are not mandatory or consistently enforced.⁵

Although some penalties appear strong, uninsured motorists find ways to circumvent them. In Pennsylvania, a vehicle's registration can be suspended as a penalty for driving uninsured. Registration validation stickers, which are attached to license plates in Pennsylvania, get stolen, sometimes by cutting off the corner of the license plate with the sticker, and resold illegally,

⁴ In 2004, states with no-fault auto insurance included Florida, Hawaii, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Dakota, Pennsylvania, and Utah.

⁵ Insurance Information Institute, "Compulsory Auto Insurance," February 2006, www.iii.org/media/hottopics/insurance/compulsory (accessed April 2006).

thereby reducing the ability of law enforcement to determine whether a vehicle has valid registration. This was an issue in the city of Philadelphia in particular. The Pennsylvania Department of Transportation estimated that innocent motorists faced aggregate costs of nearly \$1 million per year due to replacing stolen registration stickers.⁶

Another type of law aimed at uninsured motorists restricts them from collecting payments for damages in an auto accident from an at-fault insured driver. These laws, sometimes termed “no-pay, no-play laws,” have been passed in five states—Alaska, California, Louisiana, Michigan, and New Jersey. However in some of these states, the restrictions apply only to non-economic general damages such as pain and suffering. No-pay, no-play laws not only provide incentives to uninsured drivers to purchase insurance, but they also limit one aspect of the cost of uninsured drivers to insured drivers. By prohibiting uninsured drivers from making insurance claims for auto injuries, these laws prevent uninsured motorists from collecting insurance payments from an auto insurance system that they had not paid into. In 1998, Louisiana implemented a no-pay, no-play law that prohibited uninsured motorists from collecting the first \$10,000 in damages in the event of an accident, regardless of fault. In addition, if a driver did not have proof of insurance, his or her car could be towed in Louisiana.⁷ Louisiana’s rate of uninsured motorists was consistently below the national average from 1999 to 2004.

States with strict penalties, such as high fines and driver license suspensions, did not necessarily exhibit lower levels of uninsured motorists relative to other states. However, the effectiveness of various penalties in reducing the percentage of uninsured motorists at least partially depends on enforcement of the penalties and the public’s perception of the degree that the penalties will be enforced. Some states’ fines and other penalties are not mandatory. An examination of the enforcement of uninsured motorist regulations in each state is beyond the scope of this study.

Insurance Data Reporting Programs

In an attempt to identify uninsured motorists, some states have implemented insurance reporting requirements to match vehicle registrations with insurance information. In a data reporting program, insurers are required to submit insurance information on all insured vehicles within a state. The state attempts to match the insurance data with vehicle registration information to determine which vehicles are without insurance. Various studies have shown

⁶ *Pennsylvania Bulletin*, vol. 30, no. 43, October 21, 2000, www.pabulletin.com/secure/data/vol30/30-43/30_43_rr.pdf (accessed April 2006), p. 2.

⁷ Stephanie Jones, “Uninsured Drivers Travel Under the Radar,” *Insurance Journal – Texas South Central Edition*, vol. 9, no. 16, August 18, 2003, p. 37.

this to be ineffective. A report by the Texas Department of Public Safety and the Texas Department of Insurance found that insurance data verification systems in place in other states failed to fully meet five basic criteria, including the likelihood the system would reduce the number of uninsured motorists in the state, as well as system reliability, cost-effectiveness, privacy protections, and data security and integrity.⁸ Generally, UM claim counts were not reduced by data reporting systems, according to a report by the American Association of Motor Vehicle Administrators.⁹

When insurance data verification systems do not significantly reduce the number of uninsured drivers, insured consumers are negatively affected. Insured consumers pay higher premiums for these regulatory programs. In addition, increased regulatory costs tend to reduce market competition, further harming consumers. Insured consumers also must spend time correcting state reporting errors.¹⁰ Ultimately, insured drivers pay for these systems that are meant to track the uninsured, thereby further increasing the financial burden that uninsured motorists place on society.

⁸ National Association of Insurance Commissioners' Property and Casualty Committee, "Uninsured Motorists: A Growing Problem for Consumers" (Kansas City, Mo.: NAIC, 2005), p. 9.

⁹ AAMVA, "The Financial Responsibility and Insurance Committee Resource Guide" www.aamva.org/Documents/drvFinRespResourceGuide5.pdf (accessed April 2006), p. 17.

¹⁰ Insurance Industry Committee on Motor Vehicle Administration, "Online Insurance Verification" www.senate.state.tx.us/75r/Senate/commit/c640/downloads/testimony/050504/onlineins.pdf (accessed April 2006), p. 6.

Chapter 3

Levels of Uninsured Motorists Within States

Auto injury claim frequencies varied by location within states, sometimes by large amounts. Generally, UM claim frequencies and UM to BI claim frequency ratios were higher in large urban areas, compared with suburban or more rural areas. Based on data from 2001 to 2004, territories within six states were analyzed: California, Illinois, New Jersey, New York, Pennsylvania, and Texas. These six states accounted for 37 percent of all private passenger auto liability direct premiums written in the United States in 2004.¹ Locations within each state were defined based on large cities, suburbs of those cities, and the rest of the state. Appendix II contains a list of the UM and BI claim frequencies plus the UM to BI frequency ratios for the geographical locations in each of these states for each year from 2001 to 2004.

California

In California, the city of Los Angeles recorded a higher percentage of uninsured motorists than other locations in the state. Los Angeles produced the highest average UM claim frequency (0.546), BI claim frequency (1.822), and UM to BI ratio (30 percent) from 2001 to 2004, compared with other parts of the state (Figure 3-1). The average UM to BI frequency ratio for the suburbs of Los Angeles during those four years (28.7 percent) was slightly below the city's ratio. Claim frequencies in two other major cities in California, San Francisco and San Diego, were also measured. The average UM to BI claim frequency ratio from 2001 to 2004 was 23 percent in San Francisco and 23.3 percent in San Diego. The suburbs of San Francisco recorded the lowest UM to BI ratio (19.2 percent) among California locations.

The UM to BI claim frequency ratio increased steadily in California from 2001 to 2004. Similarly, the same pattern occurred in Los Angeles. In both 2001 and 2002, the UM to BI ratio for the city of Los Angeles measured 28 percent (Figure 3-2). In 2003, Los Angeles' UM to BI ratio increased to 31 percent, before climbing to 33 percent in 2004. The pattern of growth in the UM to BI ratio indicates a growing percentage of accidents caused by uninsured motorists in Los Angeles.

¹ Insurance Information Institute, *The III Insurance Fact Book 2006* (New York: Insurance Information Institute, 2006), p. 36.

Figure 3-1

**UM and BI Claim Frequencies by Location Within States
2001–2004 Average**

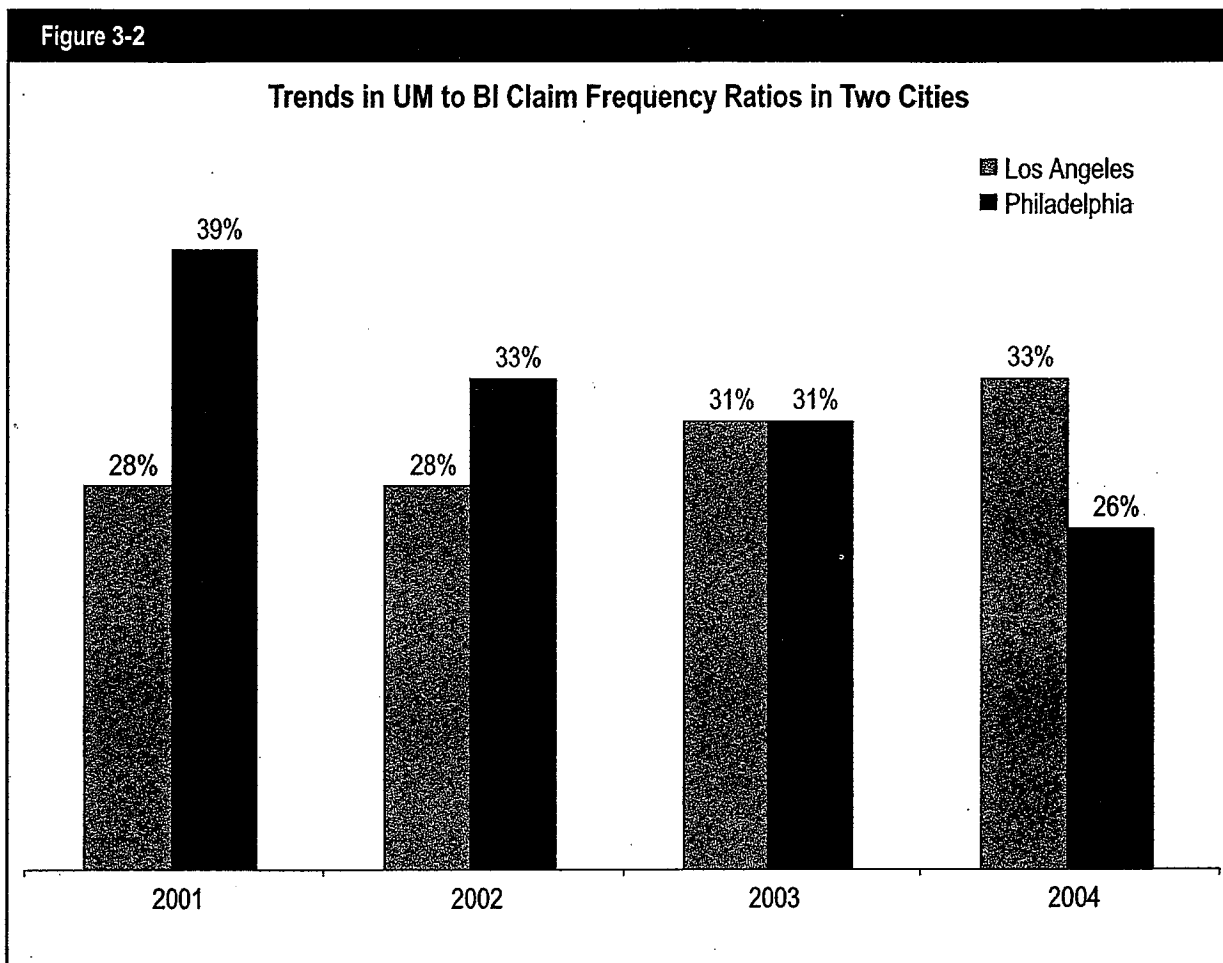
State	Location	UM Claim Frequency	BI Claim Frequency	Ratio of UM to BI
California	Los Angeles	0.546	1.822	30.0%
	Los Angeles suburbs	0.368	1.281	28.7%
	San Diego	0.242	1.038	23.3%
	San Diego suburbs	0.262	1.105	23.7%
	San Francisco	0.298	1.298	23.0%
	San Francisco suburbs	0.195	1.017	19.2%
	Rest of California	0.258	1.044	24.7%
Illinois	Chicago	0.287	1.164	24.7%
	Chicago suburbs	0.114	0.962	11.8%
	Rest of Illinois	0.094	0.866	10.9%
New Jersey	NJ—New York City suburbs	0.136	0.915	14.9%
	NJ—Philadelphia suburbs	0.108	0.856	12.6%
	Rest of New Jersey	0.061	0.747	8.1%
New York	New York City	0.147	1.577	9.3%
	New York City suburbs	0.052	0.834	6.2%
	Rest of New York	0.019	0.329	5.7%
Pennsylvania	Philadelphia	0.493	1.537	32.1%
	Philadelphia suburbs	0.085	0.741	11.5%
	Pittsburgh	0.080	0.673	11.8%
	Pittsburgh suburbs	0.047	0.500	9.4%
	Rest of Pennsylvania	0.037	0.456	8.1%
Texas	Dallas	0.377	1.480	25.5%
	Dallas suburbs	0.204	1.236	16.5%
	Houston	0.369	1.678	22.0%
	Houston suburbs	0.237	1.365	17.4%
	San Antonio	0.286	1.619	17.7%
	San Antonio suburbs	0.227	1.544	14.7%
	Rest of Texas	0.155	1.101	14.1%

Frequencies are based on number of claims per 100 insured vehicles.

Illinois

In Illinois, the city of Chicago produced more than double the percentage of accidents with injuries due to uninsured motorists than other parts of the state. From 2001 to 2004, Chicago's average UM claim frequency (0.287), BI claim frequency (1.164), and UM to BI frequency ratio (24.7 percent) were higher than both Chicago's suburbs and the rest of the state. In the suburbs of Chicago, the average UM to BI ratio

Figure 3-2



for 2001 to 2004 was 11.8 percent, less than half the level observed in Chicago. The UM to BI ratio for the rest of Illinois was 10.9 percent during the same four-year period.

New Jersey

For analysis of New Jersey, northern cities and towns outside New York City were classified as New Jersey's suburbs of New York City. Similarly, parts of southern New Jersey outside Philadelphia were classified as New Jersey's suburbs of Philadelphia. Overall, from 2001 to 2004, the UM claim frequency (0.136) and UM to BI frequency ratio (14.9 percent) were highest in northern New Jersey, compared with other parts of the state. The UM to BI ratio averaged 12.6 percent in New Jersey's suburbs of Philadelphia and averaged 8.1 percent in the rest of the state.

In recent years, New Jersey's average auto insurance rates have been among the highest in the country. In 2003, New Jersey passed new auto insurance regulations with a goal of increasing the availability of auto insurance.

UM to BI ratios in three different geographical regions within New Jersey declined noticeably in 2004. In northern New Jersey, outside New York City, the UM to BI ratio was more than 16 percent in 2001 and 2002, but fell to 13.6 percent in 2003 and 10.6 percent in 2004. In the southern New Jersey suburbs of Philadelphia, the UM to BI ratio was over 12 percent each year from 2001 to 2003 before falling to just under 10 percent in 2004. Across the rest of New Jersey, the UM to BI frequency ratio averaged between 8 and 9 percent from 2001 to 2003 before decreasing to 6.6 percent in 2004.

New York

While the state of New York was consistently among the five states with the lowest UM to BI claim frequency ratio from 2001 to 2004, there were variations within New York by location. New York City recorded the highest UM claim frequency, BI claim frequency, and UM to BI claim frequency ratio, compared with the suburbs of New York City and the rest of the state. New York City's average UM claim frequency (0.147) was almost triple the frequency in New York's suburbs (0.052) and more than seven times the frequency in the rest of the state (0.019). The average UM to BI ratio in New York City was over 9 percent, but the ratio was about 6 percent in both the suburbs and in the rest of the state, indicating a greater percentage of motorists driving without liability insurance in New York City, compared with the rest of the state.

Pennsylvania

In Pennsylvania, the problem of uninsured motorists centered in the city of Philadelphia. From 2001 to 2004, the UM claim frequency and UM to BI ratio were significantly higher in Philadelphia than in other areas of the state. The UM claim frequency in Philadelphia (0.493) averaged six times the UM frequency in Pittsburgh (0.080) during the four years measured. The average UM to BI claim frequency ratio was 32.1 percent in Philadelphia, compared with 11.5 percent in the suburbs of Philadelphia, 11.8 percent in Pittsburgh, 9.4 percent in the suburbs of Pittsburgh, and 8.1 percent across the rest of Pennsylvania.

Although Philadelphia's UM to BI claim frequency ratio was much higher than other geographical parts of the state, both the UM claim frequency and the UM to BI ratio declined each year from 2001 to 2004 in the city. Figure 3-2 shows Philadelphia's UM to BI ratio steadily declining from 2001 to 2004. Based on the UM to BI ratio, the percentage of Philadelphia motorists driving without liability insurance declined by about one-third over four years, from 39 percent in 2001 to 26 percent in 2004.

Texas

As in other states, measures of uninsured motorists were higher in urban areas of Texas, especially Dallas and Houston, compared with other parts of the state. From 2001 to 2004, the UM to BI claim frequency ratio recorded in Dallas (25.5 percent) was the highest of the locations measured in Texas. The Dallas suburbs produced a UM to BI frequency ratio of 16.5 percent during the same four years. Houston's UM to BI ratio (22 percent) was also higher than many other parts of Texas, including the Houston suburbs (17.4 percent). The UM to BI ratio in San Antonio was 17.7 percent and 14.7 percent in the suburbs. The average for the rest of Texas was 14.1 percent from 2001 to 2004.

Chapter 4

Methodology

The Insurance Research Council (IRC) collected frequency data for uninsured motorists (UM) injury claims and bodily injury (BI) liability claims for the years 1999 through 2004. Data were aggregated by state to calculate the UM and BI frequencies and the corresponding UM to BI claim frequency ratio. The ratio of UM to BI claim frequencies produces a reasonable estimate of the proportion of injury accidents caused by uninsured or hit-and-run motorists. Claim frequencies, rather than raw claim counts, were used to minimize distortions from different numbers of UM and BI earned car years. Eleven insurers, representing 58 percent of the private passenger auto liability insurance premiums across the United States, participated in the study.

Calculating the size of the uninsured driver population is important in determining appropriate public policies to reduce the problem and to measure the effectiveness of those policies in reducing the problem. The illegal nature of driving a vehicle without insurance makes obtaining an exact and accurate number of uninsured drivers in each state a very difficult task. The ratio of UM to BI claim frequencies provides an estimate of the probability that an at-fault driver in an accident was uninsured or unable to meet the liability for someone else's injuries caused by the accident. Therefore, the UM to BI ratio provides a measure of the impact on society of uninsured motorists.

A limitation of the UM to BI ratio is that the UM claim frequency also includes injury claims from hit-and-run accidents, in which it is unknown if the at-fault driver had insurance. Also, any potential underlying differences in claiming behavior between injured parties deciding to make a BI claim versus a UM claim could affect the ratio's underlying frequencies. Vehicles that were not insured, but also not driven on the road, do not factor into the UM to BI ratio. Considering these factors, the UM to BI ratio provides a consistent and reasonable measure for comparing the estimated percentage of uninsured drivers from state to state and over time within each state.

Description of Relevant Auto Insurance Coverages

The claim frequency information in this study relied on the UM and BI portions of private passenger auto injury insurance coverage. If an injury occurred to a person in an auto accident and the other driver was at fault, the injured person would file a BI claim against the at-fault driver. BI liability coverage pays for the insured driver's liability for bodily injury caused to someone else when the insured driver was at fault for the accident, up to specified policy limits. Because the injured claimant is typically someone outside the driver's household, BI claims are referred to as third-party claims. BI payments can include coverage for medical expenses and lost wages, as well as payments for general damages, sometimes referred to as pain and suffering payments.

However, if an injury occurred to a person in an auto accident and the other driver was at fault, but the at-fault driver did not have liability insurance, then the injured person would file a UM claim with his or her own insurance. UM coverage pays for a claim, up to policy limits, if an insured driver or others riding in the insured's vehicle are injured by an uninsured driver or a hit-and-run driver. The insured's UM coverage pays the amount the injured person would have otherwise received from the at-fault driver. Eligibility for payments from either BI or UM coverage depends on the other driver being at fault for the accident.

Other auto injury insurance coverages, such as medical payments (MP) and personal injury protection (PIP), were not used in this analysis because neither involves a comparable group of claims to UM claims. UM is a fault-based coverage, whereas MP and PIP are no-fault, first-party coverages. Instead, UM and BI coverages were compared because both are fault-based with the difference being whether or not the at-fault driver was insured.

Data Details

Participating companies provided data on a state-by-state basis for each year from 1999 to 2004. Each insurer provided data covering its total private passenger line of business (preferred, standard, and nonstandard lines) in each state. The number of earned car years and the number of incurred claims, including incurred but not reported claims, were aggregated to determine the claim frequencies in each state for both UM and BI coverage.

To compare claim frequencies within a state, data were gathered based on large cities, corresponding suburbs, and the remainder of the respective state. Metropolitan statistical areas (MSAs) were used to define the geographical areas within states. The United States Office of Management and Budget defines MSAs based on census data. Frequency data were compiled for selected cities and suburbs in California, Illinois, New Jersey, New York, Pennsylvania, and Texas.

Appendix I

State	Year	UM Claim Frequency	BI Claim Frequency	Ratio of UM to BI	Rank of UM to BI Ratio
Alabama	1999	0.273	0.973	28.1%	3
	2000	0.227	0.926	24.5%	4
	2001	0.198	0.920	21.5%	6
	2002	0.208	0.889	23.4%	4
	2003	0.212	0.867	24.5%	4
	2004	0.219	0.884	24.8%	2
Alaska	1999	0.191	1.338	14.3%	15
	2000	0.197	1.182	16.7%	11
	2001	0.220	1.216	18.1%	9
	2002	0.225	1.184	19.0%	9
	2003	0.169	1.179	14.3%	19
	2004	0.176	1.145	15.3%	16
Arizona	1999	0.287	1.698	16.9%	8
	2000	0.282	1.621	17.4%	9
	2001	0.289	1.575	18.3%	8
	2002	0.299	1.517	19.7%	8
	2003	0.318	1.484	21.4%	8
	2004	0.329	1.491	22.0%	5
Arkansas	1999	0.132	1.204	10.9%	27
	2000	0.135	1.156	11.6%	27
	2001	0.131	1.159	11.3%	29
	2002	0.136	1.133	12.0%	28
	2003	0.150	1.131	13.3%	23
	2004	0.163	1.179	13.9%	21
California	1999	0.290	1.501	19.4%	6
	2000	0.291	1.490	19.5%	7
	2001	0.306	1.479	20.7%	7
	2002	0.310	1.390	22.3%	5
	2003	0.313	1.314	23.8%	5
	2004	0.320	1.291	24.8%	3
Colorado	1999	0.131	0.437	29.9%	1
	2000	0.112	0.433	25.9%	3
	2001	0.115	0.430	26.8%	2
	2002	0.134	0.460	29.2%	1
	2003	0.144	0.668	21.6%	7
	2004	0.141	0.940	15.0%	17
Connecticut	1999	0.176	1.760	10.0%	34
	2000	0.197	1.688	11.6%	28
	2001	0.183	1.562	11.7%	27
	2002	0.176	1.556	11.3%	32
	2003	0.196	1.631	12.0%	28
	2004	0.195	1.604	12.2%	29

Uninsured Motorists

State	Year	UM Claim Frequency	BI Claim Frequency	Ratio of UM to BI	Rank of UM to BI Ratio
Delaware	1999	0.191	1.324	14.4%	14
	2000	0.184	1.323	13.9%	17
	2001	0.171	1.340	12.7%	25
	2002	0.193	1.395	13.8%	21
	2003	0.172	1.305	13.2%	25
	2004	0.142	1.215	11.7%	31
District of Columbia	1999	0.487	2.538	19.2%	7
	2000	0.510	2.310	22.1%	5
	2001	0.504	2.115	23.8%	3
	2002	0.395	1.832	21.6%	6
	2003	0.406	1.655	24.5%	3
	2004	0.328	1.599	20.5%	7
Florida	1999	0.179	1.197	15.0%	12
	2000	0.202	1.211	16.7%	10
	2001	0.213	1.226	17.4%	12
	2002	0.221	1.206	18.3%	10
	2003	0.231	1.166	19.8%	9
	2004	0.233	1.200	19.4%	8
Georgia	1999	0.102	1.089	9.3%	36
	2000	0.121	1.084	11.1%	30
	2001	0.117	1.088	10.7%	33
	2002	0.130	1.063	12.3%	26
	2003	0.118	1.044	11.3%	33
	2004	0.098	1.026	9.6%	39
Hawaii	1999	0.090	0.559	16.1%	10
	2000	0.077	0.536	14.4%	16
	2001	0.074	0.484	15.2%	16
	2002	0.068	0.491	13.9%	20
	2003	0.071	0.476	15.0%	17
	2004	0.062	0.461	13.5%	22
Idaho	1999	0.083	1.068	7.7%	40
	2000	0.099	1.061	9.3%	39
	2001	0.103	1.009	10.2%	37
	2002	0.085	0.981	8.7%	44
	2003	0.090	0.944	9.5%	39
	2004	0.085	0.967	8.8%	42
Illinois	1999	0.210	1.317	16.0%	11
	2000	0.210	1.283	16.4%	13
	2001	0.199	1.184	16.8%	14
	2002	0.191	1.184	16.2%	14
	2003	0.181	1.115	16.2%	14
	2004	0.168	1.043	16.1%	13

State	Year	UM Claim Frequency	BI Claim Frequency	Ratio of UM to BI	Rank of UM to BI Ratio
Indiana	1999	0.124	1.087	11.4%	24
	2000	0.131	1.053	12.5%	23
	2001	0.136	1.000	13.6%	19
	2002	0.134	0.954	14.0%	19
	2003	0.128	0.889	14.4%	18
	2004	0.133	0.854	15.5%	14
Iowa	1999	0.079	0.785	10.0%	33
	2000	0.077	0.780	9.9%	34
	2001	0.077	0.726	10.7%	34
	2002	0.083	0.702	11.9%	29
	2003	0.081	0.710	11.5%	32
	2004	0.083	0.669	12.4%	25
Kansas	1999	0.040	0.498	8.0%	39
	2000	0.037	0.435	8.5%	41
	2001	0.038	0.441	8.7%	42
	2002	0.046	0.456	10.2%	35
	2003	0.051	0.462	11.1%	34
	2004	0.062	0.487	12.7%	23
Kentucky	1999	0.095	0.978	9.7%	35
	2000	0.097	0.974	9.9%	33
	2001	0.102	0.947	10.8%	32
	2002	0.101	0.877	11.5%	30
	2003	0.105	0.889	11.8%	30
	2004	0.104	0.883	11.8%	30
Louisiana	1999	0.180	2.435	7.4%	42
	2000	0.225	2.397	9.4%	38
	2001	0.240	2.325	10.3%	36
	2002	0.243	2.253	10.8%	33
	2003	0.232	2.158	10.7%	36
	2004	0.216	2.118	10.2%	34
Maine	1999	0.065	1.288	5.1%	51
	2000	0.063	1.147	5.5%	50
	2001	0.051	1.060	4.8%	50
	2002	0.046	0.957	4.8%	51
	2003	0.041	0.938	4.4%	51
	2004	0.036	0.864	4.2%	51
Maryland	1999	0.202	1.920	10.5%	29
	2000	0.227	1.851	12.3%	24
	2001	0.231	1.809	12.8%	23
	2002	0.214	1.715	12.5%	25
	2003	0.220	1.624	13.5%	22
	2004	0.192	1.577	12.2%	28

Uninsured Motorists

State	Year	UM Claim Frequency	BI Claim Frequency	Ratio of UM to BI	Rank of UM to BI Ratio
Massachusetts	1999	0.108	1.608	6.7%	44
	2000	0.077	1.435	5.3%	51
	2001	0.059	1.341	4.4%	51
	2002	0.082	1.533	5.3%	50
	2003	0.082	1.548	5.3%	50
	2004	0.080	1.336	6.0%	49
Michigan	1999	0.071	0.507	14.0%	16
	2000	0.070	0.481	14.5%	15
	2001	0.079	0.450	17.7%	11
	2002	0.066	0.408	16.1%	15
	2003	0.063	0.358	17.7%	12
	2004	0.055	0.312	17.5%	11
Minnesota	1999	0.055	0.513	10.7%	28
	2000	0.057	0.500	11.4%	29
	2001	0.052	0.447	11.5%	28
	2002	0.049	0.431	11.5%	31
	2003	0.049	0.423	11.5%	31
	2004	0.044	0.424	10.4%	33
Mississippi	1999	0.336	1.180	28.4%	2
	2000	0.297	1.130	26.2%	2
	2001	0.259	1.117	23.2%	4
	2002	0.264	1.052	25.1%	3
	2003	0.258	0.987	26.1%	2
	2004	0.265	0.999	26.5%	1
Missouri	1999	0.153	1.259	12.2%	21
	2000	0.143	1.206	11.9%	26
	2001	0.142	1.175	12.1%	26
	2002	0.139	1.148	12.1%	27
	2003	0.133	1.111	12.0%	29
	2004	0.136	1.117	12.2%	27
Montana	1999	0.083	0.829	10.1%	32
	2000	0.089	0.822	10.8%	32
	2001	0.081	0.751	10.8%	31
	2002	0.077	0.761	10.1%	36
	2003	0.091	0.745	12.2%	27
	2004	0.091	0.731	12.4%	24
Nebraska	1999	0.067	1.009	6.6%	45
	2000	0.078	0.970	8.1%	44
	2001	0.071	0.939	7.6%	44
	2002	0.073	0.905	8.0%	45
	2003	0.071	0.897	7.9%	48
	2004	0.065	0.871	7.5%	47

State	Year	UM Claim Frequency	BI Claim Frequency	Ratio of UM to BI	Rank of UM to BI Ratio
Nevada	1999	0.224	1.510	14.9%	13
	2000	0.234	1.428	16.4%	12
	2001	0.242	1.433	16.9%	13
	2002	0.230	1.449	15.9%	16
	2003	0.289	1.587	18.2%	10
	2004	0.296	1.693	17.5%	10
New Hampshire	1999	0.102	0.977	10.4%	30
	2000	0.086	0.890	9.6%	35
	2001	0.074	0.817	9.1%	41
	2002	0.073	0.794	9.2%	41
	2003	0.069	0.777	8.8%	41
	2004	0.062	0.706	8.8%	44
New Jersey	1999	0.190	1.444	13.2%	18
	2000	0.177	1.370	12.9%	19
	2001	0.173	1.282	13.5%	20
	2002	0.167	1.270	13.2%	23
	2003	0.158	1.193	13.2%	24
	2004	0.111	1.187	9.4%	40
New Mexico	1999	0.288	1.114	25.8%	4
	2000	0.289	1.101	26.3%	1
	2001	0.306	1.090	28.1%	1
	2002	0.289	1.052	27.4%	2
	2003	0.311	1.047	29.7%	1
	2004	0.261	1.072	24.3%	4
New York	1999	0.088	1.611	5.5%	50
	2000	0.104	1.604	6.5%	49
	2001	0.104	1.481	7.1%	48
	2002	0.094	1.424	6.6%	48
	2003	0.088	1.296	6.8%	49
	2004	0.076	1.146	6.6%	48
North Carolina	1999	0.099	1.342	7.4%	43
	2000	0.098	1.275	7.7%	47
	2001	0.103	1.215	8.5%	43
	2002	0.107	1.227	8.7%	43
	2003	0.102	1.217	8.4%	44
	2004	0.092	1.197	7.7%	46
North Dakota	1999	0.017	0.300	5.7%	49
	2000	0.027	0.280	9.6%	37
	2001	0.020	0.274	7.5%	45
	2002	0.021	0.267	7.9%	46
	2003	0.020	0.240	8.5%	43
	2004	0.020	0.230	8.7%	45

State	Year	UM Claim Frequency	BI Claim Frequency	Ratio of UM to BI	Rank of UM to BI Ratio
Ohio	1999	0.124	1.039	11.9%	23
	2000	0.142	1.092	13.0%	18
	2001	0.157	1.061	14.8%	17
	2002	0.154	1.035	14.9%	17
	2003	0.160	1.004	15.9%	15
	2004	0.154	1.002	15.4%	15
Oklahoma	1999	0.163	1.460	11.2%	26
	2000	0.175	1.435	12.2%	25
	2001	0.184	1.367	13.5%	21
	2002	0.178	1.284	13.8%	22
	2003	0.176	1.233	14.3%	20
	2004	0.183	1.235	14.8%	18
Oregon	1999	0.196	1.533	12.8%	19
	2000	0.180	1.440	12.5%	22
	2001	0.180	1.407	12.8%	24
	2002	0.173	1.356	12.7%	24
	2003	0.173	1.351	12.8%	26
	2004	0.163	1.326	12.3%	26
Pennsylvania	1999	0.085	0.924	9.2%	37
	2000	0.087	0.909	9.6%	36
	2001	0.089	0.865	10.3%	35
	2002	0.089	0.835	10.6%	34
	2003	0.088	0.800	11.0%	35
	2004	0.077	0.796	9.7%	37
Rhode Island	1999	0.282	2.304	12.2%	20
	2000	0.298	2.319	12.9%	20
	2001	0.312	2.195	14.2%	18
	2002	0.352	2.150	16.4%	13
	2003	0.324	2.143	15.1%	16
	2004	0.300	2.090	14.4%	19
South Carolina	1999	0.130	1.694	7.6%	41
	2000	0.149	1.663	9.0%	40
	2001	0.146	1.547	9.4%	39
	2002	0.147	1.508	9.7%	38
	2003	0.149	1.495	9.9%	38
	2004	0.136	1.415	9.6%	38
South Dakota	1999	0.045	0.710	6.4%	48
	2000	0.054	0.670	8.1%	45
	2001	0.047	0.641	7.4%	46
	2002	0.042	0.612	6.9%	47
	2003	0.051	0.610	8.4%	45
	2004	0.049	0.549	8.8%	43

State	Year	UM Claim Frequency	BI Claim Frequency	Ratio of UM to BI	Rank of UM to BI Ratio
Tennessee	1999	0.212	1.034	20.5%	5
	2000	0.213	0.972	22.0%	6
	2001	0.209	0.947	22.1%	5
	2002	0.185	0.896	20.7%	7
	2003	0.192	0.868	22.2%	6
	2004	0.187	0.883	21.2%	6
Texas	1999	0.227	1.712	13.2%	17
	2000	0.235	1.628	14.5%	14
	2001	0.263	1.644	16.0%	15
	2002	0.265	1.592	16.7%	12
	2003	0.258	1.520	17.0%	13
	2004	0.235	1.427	16.5%	12
Utah	1999	0.104	1.299	8.0%	38
	2000	0.101	1.252	8.1%	43
	2001	0.110	1.210	9.1%	40
	2002	0.111	1.193	9.3%	40
	2003	0.107	1.211	8.8%	42
	2004	0.119	1.276	9.3%	41
Vermont	1999	0.071	1.085	6.5%	46
	2000	0.078	1.033	7.6%	48
	2001	0.066	0.947	7.0%	49
	2002	0.050	0.844	5.9%	49
	2003	0.063	0.787	8.0%	47
	2004	0.043	0.750	5.7%	50
Virginia	1999	0.133	1.312	10.1%	31
	2000	0.136	1.251	10.9%	31
	2001	0.136	1.250	10.9%	30
	2002	0.121	1.199	10.1%	37
	2003	0.122	1.164	10.4%	37
	2004	0.109	1.087	10.0%	35
Washington	1999	0.278	1.701	16.3%	9
	2000	0.283	1.606	17.7%	8
	2001	0.275	1.551	17.7%	10
	2002	0.248	1.449	17.1%	11
	2003	0.255	1.434	17.8%	11
	2004	0.264	1.431	18.5%	9
West Virginia	1999	0.080	1.245	6.4%	47
	2000	0.092	1.187	7.8%	46
	2001	0.113	1.182	9.5%	38
	2002	0.113	1.205	9.3%	39
	2003	0.104	1.133	9.2%	40
	2004	0.105	1.080	9.7%	36

Uninsured Motorists

State	Year	UM Claim Frequency	BI Claim Frequency	Ratio of UM to BI	Rank of UM to BI Ratio
Wisconsin	1999	0.120	0.989	12.1%	22
	2000	0.125	0.993	12.6%	21
	2001	0.117	0.876	13.4%	22
	2002	0.123	0.855	14.4%	18
	2003	0.117	0.825	14.2%	21
	2004	0.114	0.801	14.2%	20
Wyoming	1999	0.076	0.672	11.3%	25
	2000	0.052	0.632	8.2%	42
	2001	0.043	0.597	7.1%	47
	2002	0.053	0.571	9.2%	42
	2003	0.048	0.589	8.2%	46
	2004	0.059	0.556	10.7%	32

Notes:

Claim frequency measures the number of claims per 100 insured vehicles.

The ratio of UM to BI is the ratio of UM claim frequency to BI claim frequency.

Appendix II

California				
Location	Year	UM Claim Frequency	BI Claim Frequency	Ratio of UM to BI
Los Angeles	2001	0.559	1.975	28.3%
	2002	0.516	1.869	27.6%
	2003	0.552	1.769	31.2%
	2004	0.558	1.679	33.2%
Los Angeles suburbs	2001	0.341	1.360	25.1%
	2002	0.360	1.304	27.6%
	2003	0.387	1.256	30.8%
	2004	0.384	1.201	32.0%
San Diego	2001	0.226	1.161	19.5%
	2002	0.224	1.066	21.0%
	2003	0.264	0.984	26.9%
	2004	0.255	0.938	27.2%
San Diego suburbs	2001	0.266	1.215	21.9%
	2002	0.235	1.129	20.8%
	2003	0.270	1.060	25.5%
	2004	0.279	1.012	27.6%
San Francisco	2001	0.326	1.473	22.1%
	2002	0.298	1.293	23.1%
	2003	0.292	1.199	24.3%
	2004	0.277	1.221	22.7%
San Francisco suburbs	2001	0.193	1.133	17.0%
	2002	0.188	1.029	18.3%
	2003	0.194	0.953	20.4%
	2004	0.208	0.944	22.0%
Rest of California	2001	0.255	1.152	22.1%
	2002	0.270	1.077	25.1%
	2003	0.253	0.983	25.8%
	2004	0.255	0.965	26.4%

Illinois				
Location	Year	UM Claim Frequency	BI Claim Frequency	Ratio of UM to BI
Chicago	2001	0.347	1.287	26.9%
	2002	0.306	1.249	24.5%
	2003	0.267	1.129	23.7%
	2004	0.226	0.986	23.0%

Uninsured Motorists

Chicago suburbs	2001	0.127	1.035	12.3%
	2002	0.117	1.023	11.5%
	2003	0.112	0.940	11.9%
	2004	0.099	0.846	11.7%
Rest of Illinois	2001	0.097	0.878	11.1%
	2002	0.094	0.910	10.4%
	2003	0.091	0.875	10.4%
	2004	0.094	0.804	11.7%

New Jersey

Location	Year	UM Claim Frequency	BI Claim Frequency	Ratio of UM to BI
N.J. - New York City suburbs	2001	0.180	1.075	16.7%
	2002	0.159	0.967	16.5%
	2003	0.113	0.830	13.6%
	2004	0.079	0.742	10.6%
N.J. - Philadelphia suburbs	2001	0.143	0.976	14.7%
	2002	0.115	0.902	12.8%
	2003	0.096	0.792	12.1%
	2004	0.072	0.732	9.9%
Rest of New Jersey	2001	0.070	0.868	8.1%
	2002	0.070	0.810	8.6%
	2003	0.060	0.678	8.9%
	2004	0.040	0.606	6.6%

New York

Location	Year	UM Claim Frequency	BI Claim Frequency	Ratio of UM to BI
New York City	2001	0.172	1.849	9.3%
	2002	0.154	1.724	8.9%
	2003	0.131	1.486	8.8%
	2004	0.132	1.297	10.2%
New York suburbs	2001	0.058	0.935	6.3%
	2002	0.051	0.880	5.8%
	2003	0.052	0.794	6.5%
	2004	0.048	0.738	6.5%
Rest of New York	2001	0.018	0.354	5.1%
	2002	0.016	0.348	4.7%
	2003	0.020	0.314	6.3%
	2004	0.021	0.305	6.9%

Pennsylvania

Location	Year	UM Claim Frequency	BI Claim Frequency	Ratio of UM to BI
Philadelphia	2001	0.605	1.563	38.7%
	2002	0.534	1.611	33.1%
	2003	0.459	1.491	30.8%
	2004	0.391	1.494	26.2%
Philadelphia suburbs	2001	0.093	0.763	12.1%
	2002	0.088	0.776	11.3%
	2003	0.085	0.728	11.6%
	2004	0.076	0.701	10.8%
Pittsburgh	2001	0.092	0.773	11.9%
	2002	0.063	0.641	9.8%
	2003	0.088	0.633	13.8%
	2004	0.077	0.649	11.8%
Pittsburgh suburbs	2001	0.048	0.533	9.0%
	2002	0.052	0.502	10.3%
	2003	0.047	0.481	9.8%
	2004	0.043	0.486	8.8%
Rest of Pennsylvania	2001	0.037	0.466	7.9%
	2002	0.038	0.470	8.0%
	2003	0.040	0.451	8.8%
	2004	0.033	0.438	7.6%

Texas

Location	Year	UM Claim Frequency	BI Claim Frequency	Ratio of UM to BI
Dallas	2001	0.3749	1.5396	24.3%
	2002	0.4005	1.5344	26.1%
	2003	0.3818	1.4954	25.5%
	2004	0.3498	1.3390	26.1%
Dallas suburbs	2001	0.1941	1.2736	15.2%
	2002	0.2008	1.2727	15.8%
	2003	0.2103	1.2332	17.1%
	2004	0.2103	1.1643	18.1%
Houston	2001	0.3724	1.7696	21.0%
	2002	0.3925	1.7267	22.7%
	2003	0.3897	1.7130	22.7%
	2004	0.3180	1.4986	21.2%
Houston suburbs	2001	0.2453	1.4333	17.1%
	2002	0.2472	1.3675	18.1%
	2003	0.2472	1.3936	17.7%
	2004	0.2088	1.2687	16.5%

Uninsured Motorists

San Antonio	2001	0.2991	1.7707	16.9%
	2002	0.3104	1.6502	18.8%
	2003	0.2769	1.5813	17.5%
	2004	0.2599	1.4865	17.5%
San Antonio suburbs	2001	0.2362	1.6170	14.6%
	2002	0.2320	1.5695	14.8%
	2003	0.2319	1.4991	15.5%
	2004	0.2093	1.4989	14.0%
Rest of Texas	2001	0.1643	1.2062	13.6%
	2002	0.1624	1.1673	13.9%
	2003	0.1608	1.0817	14.9%
	2004	0.1336	0.9495	14.1%

Notes:

Claim frequency measures the number of claims per 100 insured vehicles.

The ratio of UM to BI is the ratio of UM claim frequency to BI claim frequency.

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This study examines trends in the percentage of uninsured motorists in each state based on uninsured motorists and bodily injury claim frequencies from 1999 to 2004. City-level data were also analyzed in six states. Cost: \$100 in the U.S. and \$115 elsewhere, postpaid.

Fraud and Buildup in New York Auto Injury Claims, March 2006, 100 pages.

This IRC study examines regional differences in New York's auto injury claims using data from 2002 and prior years. The study shows several aspects of claiming behavior in which New York City area claimants were different from upstate claimants, including frequencies of the presence of fraud and buildup indicators. Cost: \$100 in the U.S. and \$115 elsewhere, postpaid.

Florida Auto Injury Insurance Claim Environment, 2006 Summary Report, March 2006, 46 pages.

This IRC study highlights trends in auto injury claim patterns in Florida by comparing PIP and BI closed claims from 2005 with claim data collected in 2002 and 1997. Cost: \$100 in the U.S. and \$115 elsewhere, postpaid.

Fraud and Buildup in California Auto Injury Insurance Claims, December 2005, 52 pages.

As part of the IRC's 2002 auto injury study, file reviewers assessed claims for the presence of indicators of fraud and buildup. This report examines the prevalence of these indicators among California auto injury claims compared to national patterns. Also, fraud and buildup patterns in Los Angeles are compared to those found in the rest of the state. Cost \$100 in the U.S. and \$115 elsewhere, postpaid.

Analysis of Auto Injury Insurance Claims From Two Choice States, October 2005, 76 pages.

The third report in an IRC series focusing on auto injury claims from states with similar insurance regulations, this report analyzes BI and PIP claims in two choice states: New Jersey and Pennsylvania. The analysis uncovers differences between the two states and also shows differences based on claimants' choice of no-fault or full tort insurance. Cost: \$100 in the U.S. and \$115 elsewhere, postpaid.

Analysis of Auto Injury Insurance Claims From Four Tort States, June 2005, 104 pages.

Based on closed auto injury claim data, this report focuses on four states with either traditional tort or add-on auto insurance regulations: California, Illinois, Texas, and Washington. The analysis of BI, MP, and PIP claims reveals similarities in injuries but differences in claimed losses, medical treatment, payments, and attorney involvement by state. Cost: \$100 in the U.S. and \$115 elsewhere, postpaid.

Fraud and Buildup in Auto Injury Insurance Claims, December 2004, 210 pages.

Based on data collected as part of the IRC's 2002 study of claims closed with payment, this report examines the appearance of fraud and buildup among approximately 70,000 private-passenger auto injury insurance claims. In addition, the report examines how the appearance of fraud and buildup interacts with certain aspects of claiming behavior, including reported injuries, medical treatment, losses and payment, and attorney involvement. Cost: \$250 in the U.S. and \$265 elsewhere, postpaid.

Trends in Auto Injury Claims, 2004 Edition, December 2004.

This report examines the frequency, severity, and loss cost associated with auto insurance claims under the PD, BI, and PIP coverages from 1980 to 2003. National and state statistics are provided. Also included is information on total auto injury loss costs and average written liability premiums from 1987 to 2001. Cost: \$250 in the U.S. and \$265 elsewhere, postpaid.

Analysis of Auto Injury Insurance Claims From Four No-Fault States, October 2004, 100 pages.

This IRC report examines auto injury claims in four states with no-fault auto insurance regulations: Colorado, Florida, Michigan, and New York. The report focuses on PIP and BI closed claim data from 2002 and 1997. The analysis reveals differences regarding claimed losses and payments, medical treatment, injury types, and attorney involvement. Cost: \$100 in the U.S. and \$115 elsewhere, postpaid.

Paying for Auto Injuries: A Consumer Panel Study of Auto Injury Compensation, 2004 Edition, June 2004, 98 pages.

The IRC's fifth consumer panel study, this report analyzes the cost of auto injuries from the perspective of persons injured in an auto accident. The study contains many of the same measures as *Auto Injury Insurance Claims*, which it was designed to complement, plus several additional measures, such as payment sources other than auto insurance, decisions about attorney involvement, and satisfaction with claim settlement. Cost: \$250 in the U.S. and \$265 elsewhere, postpaid.

Auto Insurance Claims in California: A Research Perspective on Regional Differences, April 2004, 84 pages.

This IRC state report examines the auto insurance claim environment in California. California's major metropolitan regions evidenced much higher BI and PD claim frequencies and loss costs compared to non-metropolitan regions. BI claimants with minor injuries in Los Angeles were associated with higher levels of medical treatment and attorney involvement compared to similar claimants in the rest of the state. The data sources used in the study included California Department of Insurance data (years 1998 to 2000) and IRC's 2002 closed claim database. Cost: \$100 in the U.S. and \$115 elsewhere, postpaid.

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Automobile Insurance

Auto Injury Insurance Claims: Countrywide Patterns in Treatment, Cost, and Compensation, 2004 Edition, December 2003, 216 pages.

This closed claim study updates IRC's ongoing research on injuries in auto accidents based on a sample of more than 70,000 auto injury claims paid by major auto insurers countrywide. The report explores auto injury claim patterns under each of the five principal private passenger coverages, comparing 2002 data to results from similar studies conducted in 1997, 1992, 1987, and 1977. The study examines trends in injury claim patterns including characteristics of the accidents and those injured, medical treatment, losses and payments, the claim settlement process, and the impact of attorney involvement. Cost: \$250 in the U.S. and \$265 elsewhere, postpaid.

Accuracy of Motor Vehicle Records: An Analysis of Traffic Convictions, June 2002, 72 pages.

This report examines over 50,000 traffic convictions in four states to study the accuracy of MVRs with respect to traffic convictions. It also contains details about traffic schools and other conviction avoidance methods across the United States that restrict how complete a picture of driving histories MVRs may provide. Cost: \$100 in the U.S. and \$115 elsewhere, postpaid.

Claiming Behavior in New York's No-Fault Auto Insurance System: An Analysis of Closed PIP Claims, December 2001, 124 pages.

This study compares private passenger auto claim patterns for New York State and New York City with national no-fault trends in claim frequency and severity and the results of previous IRC studies. It also examines claiming behaviors such as reported injuries, medical treatment, attorney involvement, and filing of tort claims using a sample of 2,800 PIP claims closed during the 4th quarter of 2000. Cost: \$100 in the U.S. and \$115 elsewhere, postpaid.

Characteristics of Auto Accidents: An Analysis of Auto Injury Claims, January 2001, 117 pages.

This study is based on bodily injury liability closed claim data from 1997. The report examines the nature and key characteristics of motor vehicle accidents and claimants with respect to four key areas: (1) the characteristics of the accident in terms of location, impact severity, number of vehicles involved, point of impact, police involvement, and when the accident occurred; (2) the characteristics of the driver of the insured vehicle; (3) the characteristics of the insured vehicle; and (4) the characteristics of the claimant. Cost: \$100 in the U.S. and \$115 elsewhere, postpaid.

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This report explores public awareness of and tolerance for various forms of insurance fraud, including application fraud, property damage claim fraud, and injury claim fraud. Because recent indicators have suggested that auto insurance fraud has been on the rise in New York State, the report also explores differences between the attitudes of New Yorkers and respondents countrywide. Cost: \$100 in the U.S. and \$115 elsewhere, postpaid.

Fighting Insurance Fraud, Survey of Insurer Anti-Fraud Efforts, December 2001, 56 pages.

A collaboration of the IRC and Insurance Services Office, Inc. (ISO), this report presents results of a survey of companies representing 73 percent of the property-casualty insurance market. Findings show how insurers perceive the problem of fraud and the strategies and resources their companies have dedicated to fighting it. Cost: \$100 in the U.S. and \$115 elsewhere, postpaid.

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The Insurance Research Council is a division of the American Institute for Chartered Property Casualty Underwriters and the Insurance Institute of America. The Institutes are independent, not-for-profit organizations dedicated to providing educational programs, professional certification, and research for the property-casualty insurance business. Within the Institutes, the Council's purpose is to provide timely and reliable research to all parties involved in public policy issues affecting risk and insurance, but the Council does not lobby or take legislative positions. The Council is supported by leading property-casualty insurance organizations.

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